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T H E

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T H E

# ATTORNEY'S

## Complete Pocket-Book.

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P A R T II.

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### Abatement of Writs and Plaints.

(A) *With respect to the jurisdiction of the court.*

**P**LEAS to the jurisdiction of the court, if true, prevent the cause being tried there, and are called *foreign*, because they alledge, that the matter ought to be tried in another court, or else refuse the judge as incompetent, for that the matter in question is not within his jurisdiction. *Kitch. fol. 95.* As to plead, (1.) That the lands in question, are antient demefne, and ought to be pleaded in the court of the manor of which they are holden. *F. N. B. fol. 14. D. 128. A.* (2.) That the cause of action accrued in a county palatine. (3.) That the *locus in quo* is within the liberty of the Cinque ports. (4.) That the cause of action arose out of the jurisdiction of the palace court, and the like of other inferior courts. *Vid. 3 Instr. Cler. 7.*

Every one that pleads in disability of the person of the plaintiff or demandant, affirms the jurisdiction of the court, and therefore cannot afterwards plead to the jurisdiction. 35 H. 6. 12.



## Abatement of

(B) *With respect to the disability of the plaintiff.*

**T**HE causes are, (1.) For that the plaintiff is an alien, born at a place under the allegiance of a prince, who is enemy to the king. such alien enemy can neither bring an action real, personal or mixed, in his own right, but an alien friend may have an action personal and trespass for breaking his house, but not a real or mixed action. 3 *Inst. Cler.* 16, 17. (2.) That the plaintiff is excommunicated. But this is no plea in a *qui tam* action. 12 *Co.* 61. (3.) That the plaintiff is a Popish recusant. Stat 3 *Jac.* 1. c 5. § 11. (4.) That the plaintiff is outlawed, this is good where the plaintiff sues in his own right, but not in right of another; but otherwise of excommunication. 34 *H. 6.* 14. 14 *H. 6.* 14. 21 *Ed.* 4. 49. and *vid.* 3 *Inst. Cler.* 16.

(C) *With respect to the person of the defendant.*

(1.) **T**HAT the defendant is a master in chancery. (2.) A clerk in chancery. (3.) A member of parliament. (4.) A phylazer. (5.) An attorney at law. (6.) A baron of the Five ports. (7.) A serjeant at law, and ought to be impleaded by original. (8.) A serjeant at arms, or deputy. (9.) A receiver and tally cutter of the Exchequer. (10.) One of the clerks of the Exchequer, &c. See 3 *Inst. Cler.* 34.

(D) *For variance.*

(1.) **B**etween the writ and specialty. (2.) The writ and declaration. (3.) The writ and bill. (4.) The writ and testament. (5.) The writ and letters of administration. (6.) The writ and register, &c. See 3 *Inst. Cler.* 43.

(E) *For default in the writ, and the action being ill founded.*

(1.) **F**OR that the writ and declaration are not warranted by the writing or specialty. (2.) That another executor who administered is not named. (3.) That another administrator is not named. (4.) That one of the obligors is not named in the writ. (5.) That another of the obligors heirs is not named with the defendant. (6.) That tenant in dower is not named guardian in the writ. (7.) That the defendants as executors have no additions. (8.) That the writ precedes the day of payment. (9.) That the writ was brought before the cause of action. (10.) That administration was granted to others, and not to the defendant. (11.) That *A.* made *T.* and one *W.* executors, and traverses that *A.* died intestate. (12.) That a *ca. fa.* did not issue before a *sci. fa.* against the bail. (13.) That the original was purchased before the time of the trespass. (14.) That the plaintiff being an infant has declared by his attorney. (15.) That the property of the goods is not in plaintiff. (16.) Or that the property is in a stranger. (17.) That there is no such writ in the register. (18.) That there are not 15 days between the *teste* and *return* of the original, &c. *Vide* 3 *Instr. Cler.* 50.

(F) *By reason of marriage.*

(1.) **T**HAT the plaintiff and his wife were not married at the time of the original. (2.) That the plaintiff married after the writ. (3.) That the defendant was married at the day of the writ, &c. *Vide* 3 *Instr. Cler.* 69.

(G) *By reason of death.*

(1.) **F**OR that one of the defendants died before the writ sued out. (2.) That the plaintiff died after the last continuance. (3.) That the

## Abatement of

plaintiff died before the original. (4) That one of the defendants in trespass died after the writ purchased. *Vid. 3 Inst. Cler. 75.*

But in all actions in courts of record, if the plaintiff dies after interlocutory judgment, and before final judgment, the action does not abate, if it originally might be maintained by the executors or administrators of such plaintiff; and if defendant die after interlocutory judgment, and before final judgment, the action does not abate, if it might be originally prosecuted against the executors or administrators of such defendant; and the plaintiff or his executors or administrators may have a *sci. fa.* against defendant, his executors or administrators, to shew cause why damages should not be assessed and recovered; and if defendant appears at the return of the writ, and does not alledge matter sufficient to arrest the final judgment, or (being returned warned, or upon two writs of *sci. fac.* it be returned that the defendant had nothing, &c.) shall make default, a writ of inquiry to be awarded, which being executed and returned, final judgment to be given. And if there be two or more plaintiffs or defendants, and one of them die, if the cause of action survive, the action not to abate; but such death being suggested upon the record, the action to proceed at the suit of the surviving plaintiffs against the surviving defendants. *Stat. 8 & 9 W. 3. c. 11. § 6, 7.*

No plea in abatement to be received in any suit for partition, nor to be abated by the death of any tenant. *Stat. 8 & 9 W. 3. c. 31. § 3.*

(H) *For misnomer and misprision.*

(1.) **F**OR that the defendant's christian name is misnamed. (2.) That his surname is misnamed. (3.) That his wife is misnamed. (4.) *Non commorans*, and that the place in the writ is no vill or hamlet, &c. (5.) That the defendant is named of S. which is a place in E. and no vill or hamlet, &c. (6.) For misnaming the parish. (7.) That

That there are two places called *T.* in the county, to wit, *North T.* and *South T.* (8.) Two of the same name. (9.) No such person *in rerum natura.* (10.) No such vill called *K.* (11.) For misnaming the addition of trade, &c. *Vid. ibid. 79.*

(I) *For non-tenure, &c.*

(1.) **F**OR that the defendant was not tenant of the freehold at the time of the writ. (2.) That two of the defendants were not tenants, but the third defendant is sole tenant, &c. (3.) That the tenements descended to the father who is yet alive, &c. (4.) That the plaintiff was tenant in common at the time of the trespass. (5.) That he was joint tenant. (6.) Joint tenure of part and non-tenure of the residue, &c. *Vid. ibid. 95.*

(K) *For things done after the original purchased.*

(1.) **F**OR that the plaintiff discharged part of the debt after the original purchased. (2.) That the plaintiff gave an acquittance for part of the debt after the last continuance. (3.) That the demise was made after the bill exhibited, &c. *Vid. ibid. 107.*

(L) *By reason of another action depending for the same cause. Vid. ib. 111.*

(M) *By reason of the action being ill founded.*

(1.) **F**OR that the defendant bound himself jointly with another who is not named. (2.) That the bill is in case, and ought to be in account. (3.) For not counting right upon a reverter. (4.) That the plaintiff declares of two several trespasses depending upon two several titles in one and the same bill. (5.) That the plaintiff declares



## Account.

of several and distinct causes of action in one and the same bill, &c. *Vid. ibid.* 119.

(N) *By reason of a tender before the action brought.*

(1.) **T**HAT the money was tendred at the day and none there to receive it. (2.) That part was paid, and the rest tendred. (3.) That the cattle was tendred and acceptance refused.

(O) *In dower.*

**A** Writ of dower *unde nihil habet*, not to abate by exception of the tenant, *That she has received her dower of another*, unless he shew that she has received part of her dower of himself in the same town. *Stat. 3 E. 1. c. 49.*

(P) *Dilatory pleas in general.*

**N**O dilatory plea to be received in any court of record, unless the party offering the same, do by affidavit prove the truth thereof, or shew some probable matter to induce the court to believe that the fact is true. *Stat. 4 & 5 A. c. 16. § 11.*

## Account.

(A) *Account against a guardian in socage.*

*In what court.*

**I**T lies in the county court or common bench. *Nat. Br. 117. B.*

It lies not before the sheriff. *43 Ed. 3. fol. 21. pl. 11.* For the sheriff cannot assign auditors, and therefore it is in vain to bring the action before him. *Bro. Acc. 14.*

A good plea to say the land is ancient demesne, because the realty may come in question. *5 Rep. 105. a.*

**I**t lies not in the Marshalsea. *10 Rep. 74. b.*

The

## Account.

7

The heir in ward shall maintain an action against him after the age of 14 years, or at his full age, at his election. *Littleton, S. 123.*

But *Nat. Br. 118. b.* he shall not have it till the age of 21 years. *Cro. fol. 131. pl. 106.* By reason of the words of the statute of *Marlebridge, cap. 17. scil. (cum ad etatem pervenerit)* 3 & 4 *Maria. Dyer 137. pl. 25. New Tenures, 3. b. 18 Edw. 3. 55. pl. 76. 29 Edw. 3. fol. 5. pl. 13. Vide Regist. Origin. 136. Lib. Intra. 21. D. 8 R. 2. Gard. 166. 10 Rich. 2. Account 132. Doct. Stud. fol. 14. b. Old Nat. Br. 91. A.*

If the heir in such case die before his full age, his executor shall have account. *Crook 131. pl. 106.* because it concerns a chattel.

Yet note, the heir in gavel-kind at 15 years brought an account against a guardian in socage, and shews, by the custom he may alien at such age; and for this cause he was awarded to account, *per Welby. 29 Edw. 3. fol. 5. pl. 13.* For if he may do the greater, he may do the less; to sell is more than to take an account.

The executor of an heir shall have it, *per West. 2. cap. 23 Litt. 27. a. Cro. 131. pl. 106.*

Executor of an executor shall have it by 25 *Ed. 3. cap. 23. Com. 290.*

The son and heir of the lord deceased shall not have writ of account, because it belongs to the execution of the administration of the goods of the deceased. *Reg. Orig. 135. b.*

A recusant shall not have an action for any thing that is seized into the hands of the king, 3 *Jac. cap. 5.* for the king is accountable to nobody.

Any that taketh the profits before the ward be of the age of 14 years. *Nat. Br. 118. D. 4 Hen. 7. 6. 1 Hen. 6. 7. 13 Ed. 3. Account 77. 29 Ed. 3. 5. pl. 13.*

But if one occupy, and after guardian in socage recover in right of the ward, the party shall not render an account to the heir, for the guardian ought to account for this, 27 *Ed. 3. 79. Gard. 22.* and therefore the account shall be made to the guardian.

*Who shall have a writ against him.*

*Against what person an account lieth as guardian in socage.*

The reason is (as it seems) that the writ doth not make mention of the blood; *Reg. Orig.* 136. *b.* neither the count. *Lib. Intra.*

It lies against the executors and administrators of a guardian. *Stat. 4 Ann. c. 16. § 27.*

*For what things it lies.*

It lies for woods and under-woods fold, for lands, tenements, meadow, pasture; also for rents and services, perquisites of a court *ad valentiam*. *Lib. Intra.* 21. *B. & C.*

For fines of copyhold land granted by one. *Trin. 1 Jac. Com. Banc. Shopland v. Rider, Rot.* 853.

No account for the presentation of a church; therefore the guardian cannot present thereunto. *Nat. Br.* 33. *T.* 28 *Ed.* 3. 89. 29 *Ed.* 3. 5. 8 *Ed.* 2. *Presentment* 10.

But by *Daniel Just. Trin. 1 Jac. Com. Ban. Rot.* 853. *Shopland* against *Rider*, the guardian shall present, if the heir be not of the age of discretion.

It lies for writings. 32 *Ed.* 3. *Account* 60.

*The bar by a guardian in focage.*

That he had the custody till such a day from such a day, and accounted till the full age of the plaintiff, without that, that he was guardian before or after. *Lib. Intra.* 21. *cap. sect.* 2.

It is a good bar in discharge of the account, that he expended so much for necessities for the plaintiff, *ultraque, &c.* *Litt.*

No bar to say he was not next of kin, for the occupation is the substance, and not the kindred. *Litt.* 29 *Ed.* 3. 5. *pl.* 13. 22 *Ed.* 3. 11. *pl.* 8. 4 *Hen.* 7. 6. *b.* 10 *H.* 6. 7. *pl.* 21. 13 *Ed.* 3. *Account* 77.

That he was never guardian in focage, a good bar. *Lib. Intra.* 21. *b. sect.* 1.

*Judgment*  
1. *To account.*

The judgment is, *quod computet, & ideo in misericordia, quia prius non computavit.* 11 *Rep.* 38. *Lib. Intra.* 19. *D. sect.* 1.

The judgment is, *Ideo consideratum est, quod prædictus W. recuperet versus præfatum M. to recover as much as he is found in arrearages, & dampna occasione implacitationis.* 11 *Rep.* 40. a.

*Execution.*

By the common law it was but a *levari facias* or *fieri facias.* 3 *Rep.* 12. a.

And

And this only within the year; for if the year passed, he was put to his action of debt.

If the process was not continued. 33 Hen. 6. 49. pl. 33.

Per Westm. 2. cap. 45. *sci. fa.* is given after the year.

Per Westm. 2. cap. 18. *elegit* is given. 3 Rep. 12. a.

Per Marlebridge cap. 23. & Westm. 2. cap. 11. *capias* was given in process, and by consequence *capias ad satisfaciendum.* 3 Rep. 12. a.

Per Westm. 2. cap. 11. If an accountant before auditors be found in arrearages, he shall be by them committed to the next gaol in execution; but then they ought to commit him forthwith. 8 Rep. 119. b. 27 Hen. 6. 8. Com. 17.

But if an account be before the plaintiff, he ought not to commit him to prison; because the statute saith, before auditors. 45 Edw. 3. 14. pl. 13.

Westm. 2. cap. 11. If auditors are assigned by the party, which will not allow to the guardian his reasonable allowances, and they charge him with the thing he never received, and commit him to prison, he shall have an *ex parte talis.* Nat. Br. 129. F. 4 Hen. 6. 18. a. pl. 3. Reg. Orig. 137. b.

The writ is returnable before the treasurer and barons of the Exchequer at a certain day, and a *scire facias* is in the writ, to warn the plaintiff and also the defendant to be there. Nat. Br. 129. G. H. Reg. Orig. 137.

## (B) Account against a bailiff.

**I**F A. make B. his bailiff of his court or of a hundred, he shall have an account against a bailiff. Nat. Br. 118. E. *Who shall have it.*

An infant purchases lands, he shall have an account, if any take the profits. Nat. Br. 117. B.

A lunatick shall have account against the committee, when he comes to his sound memory; for



## Account.

the committee is but in the nature of a bailiff.  
28 Hen. 8. *Dyer* 26. *pl.* 164. 4 *Rep.* 127. *b.*

An executor shall have an account. *Nat. Br.*  
117. *C.* 3 *Ed.* 3. 66. 7 *Ed.* 3. 269. 5 *Ed.* 3.  
141. *pl.* 7.

But this was by *Westm.* 2. *cap.* 23.

Executor of an executor shall not have an account; *per Westm.* 2. *cap.* 23. 7 *Edw.* 3. 270.  
*pl.* 54.

But this was given *per* 25 *Edw.* 3. *cap.* 5. *Pl. Com.* 290.

An account lies for one joint-tenant and tenant in common, his executors and administrators against the other, as bailiff, for receiving more than his share, and against the executors and administrators of such. *Stat.* 4 *Ann.* c. 16. § 27.

If one make another bailiff of his manor, &c. he shall have an account against him as bailiff. *Nat. Br.* 116. *d.*

Against  
whom an  
account  
lieth as  
bailff.

A. having a bailiwick makes B. his under-bailiff to gather the amercements; he shall have an account against him. 3 *Edw.* 3. 54. *pl.* 24.

If one enter into my land to my use, and take the profits, I shall have an account against him as bailiff in law. *Nat. Br.* 117. *a.*

It lies against executors. *Stat.* 4 *Ann.* c. 16. § 27.

One joint-tenant and tenant in common may have it against the other. *Stat.* 4 *Ann.* c. 16. § 27.

Of what  
it lies.

*Cro.* 21 *Hen.* 7. 75. *pl.* 23. Account against one as bailiff *burgi sui de B.* and good.

Account against one as bailiff of a manor. *Nat. Br.* 116. *p.*

Account against a steward of an house, and of the goods it. 14 *Hen.* 4. 20. 9 *Ed.* 3. 336. *pl.* 40.

Arrearages of rent upon a lease for years or at will lies not in account, for nothing certain lies in an account. 19 *H.* 6. 20. *pl.* 67. 20 *H.* 6. 16. *pl.* 2. as the rent is; but an action of debt.

So of goods leased with a house, although they are waited. 20 *H.* 6. 16. *pl.* 2.

A good

A good bar, that he did account before auditors, *The lar* 25 *Edw.* 3. 39. *pl.* 1. 2 *Edw.* 3. 45. *pl.* 13. *for bailiff.*  
*Lib. Intra.* 17. *a. sect.* 1. he shall shew the time and the auditors.

But in pleading he ought to say, that the auditors were assigned by the plaintiff only, and not by his assent. 29 *Edw.* 3. 40. *pl.* 21.

A good bar, that he did account with the plaintiff himself. *Lib. Intra.* 18. *a. & b. sect.* 6. 11. *Rich.* 2. *Statb. Account* 46. 45 *Ed.* 3. 14. *pl.* 13.

But it is no bar to say, he did account with the plaintiff after that he had imprisoned him. 22 *Ed.* 3. 13. *pl.* 32.

Defendant pleads a lease to him of the manor, a good bar. 49 *Edw.* 3. 7. *pl.* 11.

Account of a house and goods; it is no plea to say, he bought the goods of the plaintiff; but must say without that, that he was his bailiff for account render. 49 *Edw.* 3. 7. *pl.* 11.

Payment by command of the plaintiff, a good bar in discharge. 11 *Rep.* 38. *b. Metcalf's case.* 1 *Edw.* 5. 42 *Edw.* 3. 6. *pl.* 21. But this is before auditors, and not in bar of the action.

*Payment.*

The judgment is, *Quod computet, & ideo in misericordia, quia prius in te non computavit.* 11 *Rep.* 38. *a.* *Lib. Intra.* 19. *b. sect.* 1. & 20. *d. sect.* 1.

*Judgment.*

*Quod computet* for parcel, and bar for the remnant. *Lib. Intra.* 22. *a. sect.* 12.

The judgment is, *Ideo consideratum est quod prædictus W. recuperet versus præfat. M.* as much as he shall be found in arrearages; & *dampna occasione implacitationis, &c.* 11 *Rep.* 40. *a.*

By the common law he shall have but a *levari facias*, or *fieri facias.* 3 *Rep.* 12. *a.* And this within the year only, for if the year pass, he was put to his action of debt, if the process were not continued. 33 *Hen.* 6. 49. *pl.* 33.

*Execution against a bailiff.*

*Per Westm.* 2. *cap.* 45. a *scire facias* is given after the year.

And *per Westm.* 2. *cap.* 18. *elegit* is given. 3 *Rep.* 12. *a.*

And

## Account.

And *per Marlebridge, cap. 23. and Westm. 2. cap. 11.* *Capias* is given in process.

And *per* consequence a *capias ad faciendum* after judgment. 3 *Rep. a. 12.*

And by the statute of *Westm. 2. cap. 11.* if an accountant be found in arrearages before auditors, he shall be committed by the auditors to the next gaol in execution.

But then the auditors ought to commit him to prison forthwith. 8 *Rep. 119. b.* 27 *Hen. 6. 8 Com. 17.*

*Ex parte talis.*

*Per Westm. 2. cap. 11.* if auditors be assigned by the party which will not allow to the accountant reasonable allowances, or charge him with a thing he never received, and commit him to prison, he shall have a writ *ex parte talis.* *Nat. Br. 129. f.* 4 *Hen. 6. 18. a. pl. 3.* *Reg. Orig. 137. b.*

But if auditors be assigned by the court, and they do not allow reasonable allowances, he shall not have this writ, but shall shew it to the court, and they shall make allowances. *Nat. Br. 129. f.* 3 *Edw. 3. 56. pl. 30.*

## (C) Account against a receiver.

*Who shall have it.*

**H**usband and wife shall have it upon a receipt *dum sola fuit.* 22 *Hen. 6. 39. pl. 10.*

Executor shall have it; but this is *per Westm. 2. cap. 23.* *Nat. Br. 117. c.* 3 *Ed. 3. 56. 7 Ed. 3. 209. 5 Ed. 3. 141. pl. 7.* 11 *Hen. 4. 479.* and since by 4 *Ann. c. 16.*

If two merchants occupy in common and one die, his executors shall have it against the other, *Nat. Br. 117. d.* for the two merchants had several interests.

An executor of an executor shall not have it, but only by the statute of 25 *Ed. 3. cap. 5.* *Com. 190. 17 Ed. 3. 270. pl. 5.*

Guardians of a church against their predecessors, 8 *Edw. 4. 6. p. 5.* shall have it in right of the parish.

And

And *per* 2 *Marlebridge*, *cap.* 8. they shall have it against a bailiff or head constable of an hundred, &c. for amerciaments, or not repairing highways.

Guardians and parishioners shall have it against constables and churchwardens for forfeitures of ale-house-keepers, in the same manner as for other things by the common law. 1 *Jac. cap.* 9.

Two joint-tenants of goods, one of them delivers the goods to the other to render account, one shall have an account against the other. 43 *Ed.* 3. 21. 12 *Hen.* 4. 18. *Nat. Br.* 118. *b.* for here is a privity betwixt their several interests.

So if *A.* deliver money to *B.* to deliver to me, *Nat. Br.* 117. *q.* 13 *Hen.* 4. *pl.* 1. *Hankeford*, *Nat. Br.* 138. *a.* I shall have account upon the privity in law, and *A.* may have account upon the privity in fact. 2.

*A.* indebted to *B.* in 200*l.* *B.* prays *C.* to receive this for him. *A.* prays *C.* to borrow this to pay *B.* *C.* borrows it of *D.* to pay to *B.* but pays it not at the day. *A.* was bound to *D.* for repayment. *B.* shall have an account against *C.* for this money belongs to *B.* infomuch that *C.* had his warrant to receive it. *Hill.* 12 *Jac. Com. Ban. Harrington* versus *Dean*, and so there is a trust and privity betwixt them.

*A.* delivers money to *B.* to deliver to *C.* and he pays it not, *A.* shall have account against him. *Cro.* 21 *Hen.* 7. 69. *pl.* 2. *per Frowicke.* 2. If *C.* may not have an account.

It lies not against an apprentice, *Nat. Br.* 119. *d.* Against 7 *Hen.* 4. 14. 8 *Edw.* 3. 310. *pl.* 26. for there whom it is no writ in the Register against him, 11 *Rep.* 89. *lies.* *b.* for an apprentice is not *sui juris.*

It lies against the husband for the receipt of the wife, *Nat. Br.* 118. *f.* for her receipt is his receipt. 2. If the receipt was *dum sola fuit*, it seems it does.

It lies against a deputy of a receiver, for he receives this to the use of his master, *Nat. Br.*



## Account.

119. *b.* 4 *Edw.* 3. 100. *pl.* 8. therefore the master shall have account.

It lies not against a parish priest that hath the offerings, for the clerk holds the vessel in which they are put, *Nat. Br.* 119. *c.* 25 *Ed.* 3. 46. *pl.* 32. *vide* 11 *Rich.* 2. *Jurisdiction* 18. and he is not tied to be responsible for his clerk.

But if one purchase to him and his wife, and he become indebted to the king, and die, his wife shall not be charged, 5 *Eliz.* *Dyer* 215. *pl.* 33. *contra*, if he be first in debt, and purchase but a chattel, 5 *Affiz.* *pl.* 5. For the *feme* had an interest in the land made by the husband, and she shall not be charged with her husband's debt; but the executor of the husband.

He which ought to pay me an annuity, pays this to another to pay me, or if my tenant pay the rent to another to pay me, I shall have account against him that received it; or I may charge my tenant notwithstanding the delivery of it, so not a double remedy. 6 *Hen.* 4. 8. *pl.* 33.

*A.* delivers money to *B.* beyond the sea to be paid in *England*, he shall account for it to *A.* because the payment was to be made in *England*, and that was the ground of the delivery of it. *Nat. Br.* 118. *g.* 41 *Edw.* 3. 3.

Money delivered to one upon the performing of a condition, if the condition be not performed the money to be re-delivered, he shall account. *Nat. Br.* 118. *g.* 41 *Edw.* 3. 10. 18 *Hen.* 8. *Dyer* 22. *pl.* 135. 11 *Hen.* 6. 39. *pl.* 31. for the condition implies an account, if not performed.

*Bar.*

Bar in detainee is a bar in account. *Per Brian.* 2 *Rich.* 3. 14. *pl.* 19. For the one and the other affirm property, and suppose a detainer.

The defendant said, that the plaintiff at the time, &c. was under covert baron, and this was good. 6 *Ed.* 3. 184. *pl.* 5. *Vide* 18 *Hen.* 6. 3. *pl.* 3. 2 *Hen.* 7. 15. for then she had no power to sue.

Delivery to another by the command of the plaintiff, bad, for it is too general; but to say, that he was bailiff to the plaintiff to deliver to *B.* of the  
which

which he had a deed, this is good ; because he had not confessed it by the account render, this being special matter of justification. 19 *Hen.* 6. 5. *pl.* 10. 26 *Hen.* 49. *pl.* 7. 30 *Hen.* 6. 5. *pl.* 4. 41 *Edw.* 3. 31. *pl.* 37. *Lib. Intra.* 20. *a. sect.* 5.

Account against a carrier, who said, that goods were delivered to him to deliver to *B.* which he had done, without that, that he was receiver in any other manner ; this is a good bar, *per Custome d'Angleterre.* *Mich.* 40, 41 *Eliz. Com. Ban. Burrell* versus *Callice.*

So if the plaintiff deliver to one 20 *l.* to carry to the *Lombard* to be exchanged, and he brings a bill of exchange for the money and traverseth, without that, that he was a receiver for account render, for by this he doth not confess the receipt for account render. 5 *Hen.* 5. 4. *pl.* 10. 28 *Hen.* 6. 9. *pl.* 1. 3 *Hen.* 6. 4. *pl.* 4. but justifies by a special receipt.

So if the plaintiff deliver to one 20 *l.* to obtain a discharge under the great seal of the customs for 10 hogheads of wine, the which he hath done ; this is good, 30 *Hen.* 6. 5. *pl.* 4. for the former reason.

No plea, that he was factor and was robbed, in bar of the action ; but a good plea before auditors. 4 *Rep.* 84. *a.* 41 *Edw.* 2. 2. *pl.* 9. in discharge of the account ; yet *Q.* if he was robbed by the king's subjects.

Vendee, and takes an obligation, no bar, 28 *Hen.* 8. *Dyer* 29. *pl.* 193. for that is for his own security that made the sale, and not the owner of the goods.

If one testify his receipt by deed, he cannot plead, that he never was his receiver, 10 *Edw.* 3. 383. *pl.* 18. for he is estopped by his own deed to plead so ; the law will believe a man's deed rather than his bare averment.

Defendant pleads, that he is executor of *B.* and that he received the money as a debt of *B.* this is not good, because the plaintiff supposeth him his receiver ; but he ought to say, without that, that he received it as the money of the plaintiff, 11

*Hen.*

## Account.

*Hen. 4. 79. pl. 20. 13 Hen. 4. pl. 1.* for such a traverse doth destroy the plaintiff's supposal.

*Note*; If the receipt be by the hands of the plaintiff, the defendant may wage his law, *7 Edw. 3. 269. pl. 52. viz.* that he oweth him nothing, because it may be a thing acted in private betwixt them, where the Nay of the defendant is as much to be credited as the Yea of the plaintiff.

So upon the delivery of the wife of the plaintiff, *13 Hen. 4. 8. 43 Edw. 3. 33. pl. 31.* for husband and wife are one person in law.

But upon a receipt by other hands he cannot, *9 Eliz. Dyer 265. pl. 2. 22 Hen. 6. 39. pl. 10. 5 Ed. 3. 159. pl. 22. 33 Hen. 6. 8. b. Mayle*, because the receipt lies in notice of the country, upon which an issue may be joined, and a trial had.

Expences reasonable shall be allowed to a factor, *3 Edw. 3. 56. pl. 30.* for the labourer is worthy of his hire.

A factor pleads, that he was robbed. *4 Rep. 84. a. 41 Edw. 3. 3. pl. 9.*

So for goods lost by tempest. *3 Edw. 3. 56. pl. 30. 41 Edw. 3. 3. pl. 9.* For here is the hand of God, which could not be avoided, and therefore the party not to be punished.

So for goods sold under value, by reason of war, *3 Edw. 3. 56. pl. 30.* because of the necessity of the time.

Defendant said, he received money in full satisfaction of a debt of another, &c. This was held void, because he did not name that he never was his receiver, the which was found before, *Hill. 43 Eliz. Com. Ban. Rot. 1707. Tresbam's case*; so that his plea doth not answer the plaintiff's declaration.

The defendant pleads, he bought the goods of the plaintiff, before he brought this action for them, a good bar, *14 Hen. 4. 19. pl. 21.* for thereby he claims the property in them.

A good bar *quod 21 Januarii anno, &c.* at *D.* in the county of *W.* he fully accounted with the plaintiff, *Lib. Intra. 20. b. sect. 8, 9, 10, 11.* Before the

the writ brought he did account with the plaintiff, a good bar. 4 Hen. 6. 43. pl. 4.

But he ought to account to the plaintiff before he is imprisoned, or else no bar; because it is *pendente lite*, and it appears the plaintiff had cause of action, else he had not been committed. 22 Edw. 3. 3. pl. 32. 7 Hen. 4. 14. 34 Hen. 6. 44. pl. 4.

For the plaintiff cannot commit him to prison, for *Westm. 2. cap.* gives this power only to the auditors, 45 Edw. 3. 14. pl. 13. who are the judges.

The judgment is, *quod computet, & ideo in misericordia quia prius inde non computavit.* 11 Rep. 38. a. Lib. Intra. 19. d. sect. 1. Judgment.

*Quod computet* for parcel, and bar for the remainder, Lib. Intra. 22. a. sect. 2. for if there be just cause to account for part, the action is maintainable.

But if he confess part and traverse the other, no judgment shall be till the other be tried, 41 Edw. 3. Account 34. for it may be he is to account for all notwithstanding his traverse, which may be false.

The judgment is, *Ideo consideratum quod prædictus W. recuperet versus præfat. M.* so much as he is found in arrearages, & *dampna sua occasione implacitationis, &c.* 11 Rep. 40. a.

1. By the common law it was but a *levari facias*, or *fieri facias*, 3 Rep. 12. a. to levy the arrears upon his lands or goods and chattels. 2. Execution.

And this only within the year; for if the year was past, then an action of debt only lay upon the judgment.

Unless the process be continued, 33 Hen. 6. 49. pl. 33. for the court will not grant out executions upon sleeping judgments, for this may prove dangerous.

2. *Per Westm. 2. cap. 45. a. sci. fac.* is given after the year, 3 Rep. 12. a. upon the judgment against the defendant, to shew why he should not pay the arrears due to the plaintiff by the judgment.

*Per Marlebridge, cap. 23. & Westm. 2. cap. 11.* a *capias* was given in process, and by consequence  
a ca-



a *capias ad satisfaciendum* in execution. 3 *Rep.* 12. a. *Lib. Intra.* 18. c. *sect.* 1, 2, 3. which are both to lay hold of the person of the defendant.

*Per Westm.* 2. *cap.* 11. if the accountant before auditors be found in arrearages, he shall be committed by them to the next gaol in execution; the same law is, if he will not account before the auditors, 10 *Edw.* 3. 387. *pl.* 28. when he is adjudged by the court to do it.

But this shall be forthwith, 8 *Rep.* 119. b. 27 *Hen.* 6. 8. *Com.* 17. for the statute being penal must be strictly pursued.

But if he account before the plaintiff, he cannot commit him to prison; for the statute saith before auditors, 45 *Edw.* 3. 14. *pl.* and no imprisonment lay before the statute.

*Ex parte  
talis.*

*Per Westm.* 2. *cap.* 11. if auditors be assigned by the party plaintiff, who will not allow reasonable charges to the receiver, or charge him with a thing he never received, and then commit him to prison, he shall have this writ, *Nat. Br.* 129. f. 4 *H.* 6. 18. a. *pl.* 3. *Regist. Origin.* 137. b. which is in the nature of an *audita querela*.

But if auditors be assigned by the court which do not make allowance; yet the defendant shall not have this writ, but may complain to the court, and they shall order them, *Nat. Br.* 129. e. 3 *Ed.* 3. 56. *pl.* 30. to do justice; for they are ministers of the court, and to be answerable for their actions.

*Bailiff and  
receiver.*

*Note,* That an account lieth in one writ against a bailiff and receiver. *Nat. Br.* 116. p. 21 *Hen.* 6. 21. 42. 9 *Edw.* 3. 356. *pl.* 38, & *pl.* 40. 14 *Hen.* 4. 20. *pl.* 25. *vide* the writ, *Nat. Br.* 117. c. *Regist. Origin.* 135. For one and the same person may be bailiff and also receiver at one time to one and the same person.

*Vide* the count, *Lib. Intra.* 17. b. *sect.* 1.

And for all the other parts they are in the same manner, as is described before in bailiff and receiver.



## ACTIONS in general.

### (A) *In what cases they will lie.*

**F**OR all injuries done to a man's person, reputation, or property, and for every right he is to have a remedy. *Bac. Abr. p. 28.*

Where a person has several remedies he may chuse which he will. *1 Inst. 145. Stile 4.*

Where there may be *damnum absque injuria*, no action lies; as if I retain a master in my house to instruct my children, though this be to the damage of the common master of a school, yet no action lies. *Bac. Abr. 28.*

### (B) *For whom and against whom.*

**N**O persons are excluded from bringing an action, except on account of their crimes or their country; as men attainted of treason or felony, popish recusants, persons outlawed or excommunicated, convicted in a *præmunire*, or alien enemies. *1 Inst. 128.*

A man that has a special and limited property in goods, as a carrier that has goods delivered to him, a sheriff who has levied goods, a bailiff who has goods in his keeping, &c. shall have actions against strangers that take them away, because they are answerable in damages to the owner. *Bac. Abr. p. 29.*

### (C) *In what cases distinct things may be laid in the same action.*

**D**EBT on an obligation, and on a *mutuus*. Debt and detainue. Debt upon a lease and for clothes. Several wrongs and trespasses. Several actions on the case, where the case is of the same kind; as an action for a fraud on the delivery of the goods, and on the warranty of the same goods, being both on the contract; so against a common

## Actions in general.

common carrier on the custom of the realm, and trover, because both on the tort. For entering plaintiff's house, breaking his chests, and carrying away his goods, and for beating his servant, *per quod servitium amisit*; for a general action of trespass, and a special action upon the case may be joined. Where one has a right to recover in the same kind of action, though he derives his right from different titles, yet being conjoined in him, he may recover in one action. But one cannot in the same action join a demand in his own right, and that which he has in the right of another. Several persons may join in one action where their interest is joint. *Bac. Abr. p. 29.*

### (D) *In what not.*

**D**EBT and account. Debt and trespass. Actions upon a tort, and upon a contract, *assumpsit* and trover. *Bac. Abr. p. 30.*

### (E) *Actions local or transitory.*

**A**LL actions real or mixed, as *trespasses quare clausum fregit, ejectment, waste, &c.* must be laid in the county where the lands lie. So of debt for rent against an assignee of a term, on the privity of estate, and all actions on penal statutes must be laid in the proper county. If a declaration contains matters lying in two counties that join, it shall be tried by both counties, on a *venire* directed to the sheriffs of both counties, who are to summons six of each county. Action of debt against the executor of a lessee, in the *detinet* for arrears in testator's life-time, may be brought any where; but where it is in the *debet* and *detinet* for rent accrued in the executor's life time, it must be where the land lies. All personal actions as debt, detinue, assault, deceit, trover and conversion, account, &c. may be brought in any county and laid in any place. On a contract made beyond sea, if the contract be not dated at a particular place, an action

action may be laid any where in *England*; but if there be a place mentioned, it may be thus, *in a certain place called Bordeaux in France in Islington in the county of Middlesex. Bac. Abr. p. 35. vid. tit. Venue post.*

## Administrators and Administration.

**A**dministrators are answerable in the same manner as executors. *Stat. 31 E. c. 11.*

Administration is grantable to the widow or next of kin, or both, by the discretion of the ordinary. *Stat. 31 E. 3. c. 11. 21 H. 8. c. 5.*

And where divers are equally of kin, the ordinary is at liberty to accept one or more, taking nothing for the same, as in probate of testaments, unless the goods of the deceased amount above the value of 100 s.

On granting administration a bond must be given, with two or more sureties in the name of the ordinary, to make an inventory, and an account of the administration, &c. *Stat. 22 & 23 C. 2. c. 10. made perpetual by 1 Jac. 2. c. 17. s. 5.*

Administrator is accountable to the ordinary. *Stat. 31 E. 3. c. 11. 22 & 23 C. 2. c. 10.*

But shall not be cited unless on the behalf of a minor, creditor, or next of kin. *1 J. 2. c. 17.*

Surplusage to be distributed one third to the wife, residue amongst his children, and such as legally represent them, if any of them be dead, other than such children (not heirs at law) who have any estate by settlement of the intestate in his life-time, equal to the other shares. Children, other than heirs at law, advanced by settlements or portions not equal to other shares, to have so much as makes the estate of all equal. But the heir at law, to have an equal part with the other children, without any consideration of the value of the land, which he has by descent or otherwise from the intestate. If there be no children, nor legal representatives of them, one moiety to be allotted to the wife, the residue equally to the next of kin to the

## Administrators, &amp;c.

the intestate in equal degree, and those who represent them. No representation to be among collaterals after brothers and sisters children. And if there be no wife, all to be distributed among the children; and if no child, to the next kin to the intestate in equal degree, and their representatives. Distribution not to be made till a year after intestate's death; and every one to whom shares are allotted, to give bond with sureties, that if debts afterwards appear, he shall refund his ratable part thereof, and of administrator's charges. *Stat. 22 & 23 C. 2. c. 10.*

And if, after the death of the father, any of his children die intestate, without wife or children, in the life of their mother, every brother and sister, and their representatives, to have equal share with her. *Stat. 1 J. 2. c. 17.*

Estates *pur autre vie*, if there be no special occupant, of which no devise is made, or so much thereof as is not devised, to go, be applied, and distributed, in the same manner as the personal estate of the testator or intestate. *Stat. 14 G. 2. c. 20.*

## Apprentices.

**N**ONE to exercise a trade but such as has served seven years apprenticeship. *Stat. 5 Eliz. c. 4.*

Every householder using half a plough-land may have apprentice any person above the age of 10 years, and under 18, to serve in husbandry until his age of 21 or 24; the taking of apprentice to be by indenture. *Ibid.*

None are bound to enter into apprenticeship but such as are under 21 years of age. *Ibid.*

Apprentices under 15 years old robbing their masters not ousted of clergy. *Stat. 12 A. 1. c. 7.*

6*d.* for every pound for 50*l.* or under, and 12*d.* for every pound more than 50*l.* which for 5 years shall be paid or agreed for, in putting out any clerk,



clerk, apprentice or servant, to learn any profession, trade or employment, to be paid by the master. The full sum given to be written in words at length in the indenture, which must be dated the day it is executed; or the master forfeits double the sum given. And indentures executed within the bills of mortality must be brought to the stamp-office, and the duties paid and stamped within a month after dated; and where executed elsewhere, must, within two months after they are executed, be brought either to the head office, or to some collector of the stamp duties; and the duty to be paid; and if paid to the receiver general, the indentures to be stamped; and if paid to a collector, he must indorse a receipt for the money paid him; and the indenture, if it is executed within 50 miles of London, must within 3 months after date, but if at a greater distance, 6 months after date, be brought to the head office to be stamped with one of the new stamps. And indentures wherein the full sum agreed on is not inserted, or the duties not paid, or not stamped or tendred to be stamped, to be void, and not available to any purpose whatsoever, and the clerk or apprentice not to have any privilege of freedom, or using his trade. Money given to put out apprentices, either by parishes or publick charities, not to pay any duty. No indenture, &c. to be admitted in evidence in any suit brought by the parties thereto, unless he that gives it in evidence, first makes oath, that to the best of his knowledge the sum therein mentioned was all that was paid, &c. on behalf of the apprentice, for the benefit of the master, &c. Where any thing is given to a master, not being money, the duty to be paid for the full value thereof. *Stat. 8 A. c. 9.* made perpetual by *9 A. c. 21. f. 7.*

If any master neglects to pay the duties above-mentioned, he forfeits 5*l.* *Stat. 9 A. c. 21. f. 66.* *18 G. 2. c. 22. f. 24.* See *stat.* relating to servants, *20 G. 2. c. 19.* *27 G. 2. c. 6.*

*Assidabits.*



## Affidavits.

### *King's Bench.*

**T**HE true place of habitation, and true addition of every person that makes his affidavit must be inserted therein. *Reg. M. 15 Car. 2. 1633.*

The court having declared that no affidavit sworn before a commissioner in the country, shall be read in court before it be filed; it is desired that such affidavits be brought to the clerk of the rules, to be filed in such convenient time, that copies of them may be duly made, and delivered to the party affiling the same. *Notice in the K. B. office, M. 9 G. 2.*

### *Common Pleas.*

**T**HE secondaries of the several offices not to file affidavits which are not taken before persons commissioned; and to that end books of the names of persons lawfully authorized to take affidavits in the country to be used in this court, shall be delivered to, and kept by the secondaries, and no affidavit shall be read in court before it is filed. *Reg. T. 2 W. & M.*

But all affidavits sworn in town before a judge, or in court, may be read in court before they are filed with the secondary, and nothing paid for them. *Instr. Cler. 502.*

Affidavits to be produced, read, or made use of, before any of the prothonotaries upon taxation of costs, and other matters to them referred, shall be filed by the secondaries in the respective prothonotaries offices. *Reg. H. 11 G. 2.*

## Appearance and Common Bail.

### *King's Bench.*

**U**PON every judgment confessed by warrant of attorney, bail for the defendant shall be filed to warrant the

### *Common Pleas.*

**A**ppearances to be duly entered with the prothonotaries or filazers with whom the same ought to be entered;

## King's Bench.

the judgment; or the attorney who ought to file it, shall forfeit 10 s. for every bail-piece not filed; and for every other such common bail which ought to be affiled 10 s. and punished as the court shall think fit *Reg. H. 1 W. & M.*

If any defendant voluntarily appears, at the suit of any plaintiff, in any action, such appearance shall be of no effect, except the attorney for the plaintiff, within 14 days after sues out a *latitat* or bill of *Middlesex*. *Reg. T. 4 W. & M.*

To distinguish by whom common bail is filed, when filed by the plaintiff for the defendant, these or the like words shall be written on the bail-piece, FILED ACCORDING TO THE STATUTE. *Reg. M. 10 G. 2.*

*venue*, nor shall any attorney receive or deliver any declaration or count, unless appearance be first entered; and the filazers may at all convenient times freely peruse the doggets and other memorials of the prothonotaries, that in every term they may deliver in writing the names of attornies, who have not entered appearances, to the lord chief justice or his brethren (which they are required diligently to

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tred; but if special bail be required in the case, the plaintiff not to be concluded by such appearances, if he insists upon it. *Reg. M. 1654.*

Appearances must be entered in the office where the process issued, as upon a *capias*, &c. with the filazer, or upon a writ of privilege with the prothonotary.

Any attorney of either bench accepting a warrant to appear, or subscribing a process, declaration, or warrant to appear, shall cause appearance to be entered, or be liable to an attachment, or be put out of the roll as the case requires; and the party not to be received to countermand such appearance after his retainer. *Reg. M. 1654.* & *vid. post.*

No defendant shall imparl, amend his plea, or move to change the

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## Arrests in Civil Cases.

do,) that the justices may without remissness proceed against such offenders. *Reg. E. 24 Car. 2.*

For preventing neglects in entering appearances, all the rules heretofore made relating thereunto shall be punctually observed; and for the further enforcing them, it is ordered that every attorney of this court accepting or subscribing any warrants to appear for any defendant shall enter appearance within \* four days after the appearance day in *London* and *Middl. sex*, and in 8 days in other counties, or be liable to an attachment, and shall not be discharged therefrom, till he hath paid full costs to the plaintiff for the prosecution on such attachment; and the defendant when he appears, shall be compelled to plead, as of the time when he should have pleaded, if his appearance had been duly entered. *Reg. H. 6 G. 1. C. B.*

### *King's Bench and Common Pleas, &c.*

**I**N all cases where the cause of action amounts not to 10*l.* in a superior court, or to 40*s.* in an inferior court, the defendants (a copy of process being served) shall appear at the return thereof, or within 8 days after, and the affidavit of service of such process may be made before any judge or commissioner of the court, out of which such process shall issue, or before the officer for entering common appearances, or his deputy; and is to be filed *gratis*. Stat. 5 G. 2. c. 27. made perpetual by 21 G. 2. c. 3.

## Arrests in Civil Cases.

### (A) *For what causes.*

**I**N a superior court, an affidavit must be made before a judge or commissioner of the court, or before the officer or deputy that issued the process, that the cause of action amounts to 10*l.* or upwards,

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\* But see the statute following,

upwards, and in an inferior court to 40*s.* or upwards, otherwise the defendant is not to be arrested, but only served with a copy of the process; and the sum in the affidavit must be indorsed on the writ. *Stat. 12 G. c. 29. & 5 G. 2. c. 27.\**

Where the cause of action does not amount to 10*l.* in a superior court, nor to 40*s.* in an inferior court, no special writ, nor process specially expressing the cause of action to be issued, on forfeiture of 10*l.* by the attorney or officer suing it out, to the person aggrieved. *Stat. 5 G. 2. c. 27.\**

And no persons are to be arrested in actions on penal statutes, (a) slander, (b) trespass, (c) battery, wounding or (d) imprisonment, unless by (e) order of court, or warrant from a judge; nor in covenant, unless for the payment of money.

## (B) By what authority made.

**T**HE sheriff and his officers, are not to examine the judicial act of the court, but ought to execute the writ. *Dalton's Sheriff 104. Dyer 60. 9 Co. 68. 10 Co. 70, & 76. b.*

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And

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\* *Made perpetual by 21 G. 2. c. 3.*

(a) *Gilb. Hist. C. P. 37. Bac. Abr. 210. pl. 3. 12 Mod. 231. Lawyer's Magazine for Hilary term 1762. p. 4, 9. Yelv. 53. Danv. Abr. 680. Barnes's Notes, C. P. 81. Com. Rep. 75. Cas. 48.*

(b) *Reg. M. 1654. 6 Car. 2. Barnes's Notes, C. P. 79, 80. 11 Mod. 49. pl. 18. Lawy. Mag. as above 10.*

(c) *Barnes 79, 80. Reg. M. 6 Car. 2. 1654. T. 24 El. 1583. 2 Keb. Rep. 109. pl. 28. Sid. 276. pl. 4. Gilb. Hist. C. P. 36, 37. Cas. of Pract. C. P. 106. Pract. Reg. C. P. 64. See Barnes 65. Lawy. Mag. as above 16.*

(d) *Same authorities as lost above. Sid. 307. pl. 16. Mod. 2. Comb. 57. 2 Keb. Rep. 108. pl. 46. Lawy. Mag. as above. p. 17.*

(e) *Reg. M. 6 Car. 2. 1654. Barnes 74.*



## Arrests in Civil Cases.

And they are not punishable for arresting a man without a cause, where the court awards process to the sheriff. 20 H. 6. pl. 5.

But this difference is to be regarded, that when the court has jurisdiction of the cause, and proceeds *inverso ordine*, or erroneously, the officer is excuseable; but when it has not jurisdiction, the proceedings are *coram non iudice*, and an action will lie against the officer, without regard to the process. *Dalt Sher.* 106.

A sheriff, &c. making out his warrant, not having the process, and the procurers thereof, upon complaint to the justices of assize, or judges of the court, shall be liable to attachments, &c. and be examined upon oath, and on confession or proof by witnesses, to be committed till satisfaction made to the party grieved of 10 l. and such costs and damages as the judges shall set down; and 20 l. a-piece for the king. *Stat. 43 E. 1. c. 6.*

And by *stat. 6 G. c. 21.* the forfeiture for making out any warrants before the receipt of the writ is 10 l.

### (C) By whom made.

**I**N all civil cases the sheriff is the proper officer for executing writs and process, which he may either do himself, or command his under sheriff, bailiff, or other sworn or known officer to do it, and such command is good without any precept in writing; but where he commands one that is no sworn or known officer, he must deliver him the writ itself or a precept in writing; yet in some special cases writs and process must be directed to the coroners, as where the sheriff is of kin or tenant to one of the parties; where the sheriff is party to the suit; where he makes default in executing process; or where partiality is found in him: But if he be dead or removed, or there be no sheriff, the next sheriff chosen must execute the process. *Law of Arrests* 9, 10, 11, 12, 66.

If



If the sheriff die before the expiration of his year, or before he be superseded, the under-sheriff may execute the office in his name till another is appointed. *Stat. 3 G. c. 15.*

Where the original process is once directed to the coroners, all the rest in that suit must be directed to them, although the sheriff be removed, dead, or acquitted, and another indifferent sheriff chosen, depending that suit. *Dalt. Sher. 99.*

Process must be executed by all the coroners in the same county. *Stamf. 53.* But if three of them die, the fourth may execute and return the process, until more are chosen. *Co. Lit. 181. b.*

Where there are two sheriffs, and one of them is challenged, the other may execute the writ in the name of both, and so in case of two coroners. *Salk. 152.*

Process against citizens of York awarded to the sheriff of the county, because the officers of the city were citizens. *Dalt. Sher. 99.*

For favour in the under-sheriff, the process must be directed to the high-sheriff, with this clause, *that the under-sheriff shall not meddle.* *Ibid.*

But where both the sheriff and coroners are partial and faulty, the process must be directed to *Elisors*, i. e. *Persons* chosen by the court.

The palace of *Westminster* being exempt out of every county, the process must be directed to the guardian or keeper of the palace. *Dalt. Sher. 100.*

See where it must be directed to the bishop. *Law of Arrests 15.*

Where the mayor and sheriffs of *London* are faulty, it must be executed by the constable and lieutenant of the *Tower.* *Ibid. 101.*

(D) *Who may not be arrested.*

Peers, &c. (a) **P**EERS of the realm, nor their servants; members of parliament, &c. (b) members of parliament or convocation, nor their servants in the time of parliament or convocation, and for certain days before and after; ambassadors, &c. (c) ambassadors nor their servants; the (d) king's servants, unless leave is granted by the lord chamberlain; the lord (e) mayor of London; those (f) persons whose attendance are requisite in any of the king's Lord mayor,

(a) 4 *Bac. Abr.* 228, 231. 2 *R. Raym.* 1247. 4 *Inst.* 24. *Styl. Rep.* 222, 253. *Mo.* 767, 778. *pl.* 1080. 3 *Seld.* 1478. *Dy.* 60. *a.* in *Marg. Noy's Rep.* 102. *S. P. C.* 38. (a.) *Hawk. Pl. Cr.* 59. 9 *Co.* 49. *a.* 68. *Jenk. Cent.* 107. *pl.* 6. *Hob.* 61. 10 *Co.* 76. *b.* 12 *Co.* 96. 2 *Inst.* 48. 3 *Inst.* 30. *pl.* 19 *Salk.* 3. 512. 3 *Seld.* 1538, 1539, 1589, 1697. See *Lawyer's Magazine* for Easter term 1762. where you will find in p. 130. to p. 144. an ample and satisfactory account of the legal privileges of peers.

(b) See *Lawy. Mag.* as above, p. 144 to 150.

(c) *Stat.* 7 *A. c.* 12. *f.* 3. 2 *Barnes's Notes C. P.* 332. 10 *Mod.* 4, 5. 8 *Mod.* 288. 2 *Str.* 797. 2 *Ld. Raym.* 1524. *Fitzgib.* 200. *pl.* 12. *Barnes* 264. *Pract. Reg.* 6. *p.* 14. *Barnes* 271, 272. *Rep. & Cas. of Pract. C. P.* 134. *Barnard. K. B.* 79, 401. *Rep. & Cas. of Pract. C. P.* 65.

(d) *Keb. Rep.* 842. *pl.* 33. 2 *Show. Rep.* 84. See *T. Raym.* 152. See *T. Raym.* 34. *Keb. Rep.* 137. *pl.* 70.

(e) 2 *Lil. Abr.* 456. (C).

(f) See the *Lawyer's Magazine* for the year 1762. p. 154, 155, 164, 167, 174, 175, where you will find the whole law treated very methodically, relative to the privilege from arrest of sergeants, and counsellors at law, officers of the several courts of justice, their clerks and servants, parties to suits, witnesses, and jurors.

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king's courts at *Westminster*, as the (g) judges and Officers of their necessary servants, (h) clerks, and (i) attornies, &c. *vid.* title *Privileged persons.* courts.

A bankrupt is free from arrests in going and coming to surrender to the commissioners, and from actual surrender for 42 days, or such further time as shall be allowed to finish his examination, provided he was not in custody at the time of surrender; and if he be arrested for debt, or on any escape warrant, coming to surrender, or after his surrender, within the time before mentioned; then on producing the summons or notice under the hands of the commissioners or assignees, and giving the officer a copy thereof, he shall be discharged; and if any officer detain such bankrupt, he shall forfeit to the bankrupt for his own use 5 *l.* for every day he detains him. And if any commission of bankruptcy shall issue against any person who shall have been discharged by virtue of this act, or shall have compounded with his creditors, or delivered to them his effects, and been released by them, or been discharged by any act of insolvency, then the body only of such person shall be free from arrest and imprisonment; but the future estate shall remain liable to his creditors (the tools of trade, necessary household goods, and necessary wearing apparel of such bankrupt, and his wife and children excepted) unless the estate of such person produces clear 15 *s.* in the pound. *Stat. 5 G. 2. c. 30.*

Persons who list themselves to serve on board any ship of war, shall not be taken out of the service by any process or execution (except for criminal matter) unless for a real debt, or other just cause of action amounting to 20 *l.* of which affidavit must be made before a judge of the court, or some person authorised to take affidavits, a memorandum of which oath to be marked on the writ, for which

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(g) *Crompt. Jurisdiction of Courts* 11. 2 *Sid.* 31.

(h) *Ld Raym.* 399. *Pract. Reg. C. P.* 380.

(i) *See Lawy. Mag. in 1762. p. 155 to 164.*

*Bankrupts.*  
*See Lawy.*  
*Mag. for*  
*the year*  
*1762,*  
*p. 182 to*  
*189.*

*Sailors.*

memorandum or oath no fee to be taken: And if any person be arrested contrary hereto, the judge of the court, on complaint of the party, or his officer, may examine the same, and by warrant discharge such seaman without fees, upon proof, that he was belonging to one of his majesty's ships, and arrested contrary to this act; and to award costs, for recovery whereof he shall have the like remedy that the plaintiff might have had for his costs. But any plaintiff, on notice first given in writing of the cause of action to such seaman, or left at his last place of residence before his entering into the service, to file a common appearance in an action, for any debt, so as to proceed to judgment and outlawry, and to have execution, other than against the body. *Stat.* 31 G. 2. c. 10. f. 28. 1 G. 2. f. 2. c. 14. f. 15. See *Lawy. Mag.* 200.

*Soldiers.*

And the same with respect to a volunteer-soldier, only that the original debt for which he may be arrested by process or execution must amount to 10*l.* *Stat.* 2 G. 3. c. 11. f. 65. See *Lawy. Mag.* 193.

*Heirs, executors and administrators.*

No attorney at his peril to make out any precept or writ with an *aceti*am against any heir, executor or administrator, or in any case where by the custom of the court special bail is not required. *Reg. M.* 15 *Char.* 2. *K. B. Reg.* 2. *And of M.* 1654. *C. P.* f. 12. *Cas. Temp.* Holt 87. 6 *Mod.* 242. 12 *Mod.* 511. *Salk.* 98. pl. 4. *Styl. Rep.* 367. *Sid.* 63. pl. 34. *Hetl.* 72. 3 *Bulstr.* 316. *Ventr.* 321. *Gilb. Hist. C. P.* 37. *Kell. Rep.* 89. pl. 67. 2 *Brownl. Rep.* 293. *Yelv.* 53. 4 *Mod.* 245. *Cro. Car.* 59. pl. 3. *Cro. Jac.* 350. pl. 2. *Lit. Rep.* 3. See *Lev.* 39, 345. *Salk.* 98. pl. 4. 3 *Bulstr.* 317. *Ventr.* 355. *Sid.* 368. pl. 4. 2 *Keb. Rep.* 371. pl. 28.

*At the suit of persons unknown.*

If a person procure another to be arrested in the *Marshalsea*, or in any court within *London*, or in any city, borough, town corporate, or other place where any liberty is used to hold plea in personal actions, at the suit of any person where there is no such person known, or without the plaintiff's consent;



consent; every person who shall so procure any arrest, &c. and shall be accused by indictment, presentment, or by the testimony of two witnesses, or other due proof, shall suffer six months imprisonment, and before he shall be delivered shall pay to the party arrested or attached treble costs; and also forfeit unto such person in whose name he shall procure such arrest, &c. if there be such person known, 101. *Stat. 8 El. c. 2. s. 4. Cro. Eliz. 236. pl. 1. Lutw. 166, 169. Carth. 417.*

If a defendant be legally delivered from an arrest upon any process, he shall not be arrested again at the same time, by virtue of another process, at the suit of the same plaintiff. The attorney or plaintiff offending, the attorney to be expelled, and both to be punished as the court shall think fit. *Rig. 15 Car. 2. K. B. See Barnes 50.*

## (E) When to be made.

**A** *Latitat* may be taken out before the money is due, but the defendant must not be arrested upon it before, (a) and this differs from an original, for if it be tested before the money due, it is abateable. By the (b) custom of London, the debtor may be arrested before the money is due to make him find sureties. *Vent. 28.*

A plaint levied in an inferior court before a debt contracted, and an arrest on a process upon the plaint, adjudged ill. *7 Mod. 55.*

An arrest before the writ or process sued out is not good, although the writ be tested before the arrest (c).

Whether or no a writ be delivered to the sheriff before the warrant and arrest, is not material to

(a) 8 *Mod.* 343. *Barnard. K. B.* 57.

(b) 8 *Co.* 126. *Hardr.* 303. *Hob.* 86. *Bo-bun's Priv. Lond.* 79.

(c) 3 *Keb. Rep.* 213. *pl. 21.* 2 *Keb. Rep.* 173. *pl. 56.* 198. *pl. 25.* *T. Raym.* 161.



## Arrests in Civil Cases.

the bailiff, so long as *in rei veritate* there is a writ to warrant the arrest. And the bailiff is not chargeable for the execution thereof, for it is not his privity, nor hath he notice when the writ is delivered to the sheriff. 3 *Lev. Rep.* 93.

*After the  
essoign-  
day.*

On a writ returnable *Ostab' Pur'* in *C. B.* defendant was arrested the 10th of *February*, which being after the *essoign* day, adjudged ill. *Keb. Rep.* 718. *pl.* 47. See *Law. Mag.* 218.

*In the  
night.*

An arrest may be in the night as well as the day. 9 *Rep.* 66. *Cro. Jac.* 280. *pl.* 10. 486. 3 *Salk.* 46. *Jenk. Cent.* 290. *pl.* 30. *Hale's Pl. Cr.* 45. 5 *Co.* 92. *b.* *Orw.* 63.

*On a Sun-  
day.*

No writ, process, warrant, order, judgment or decree (except for treason, felony, or breach of the peace) must be served or executed on a *Sunday*; such service is void, and the offender is liable to answer damages as if done without warrant. *Stat.* 29 *Car.* 2. *c.* 7. *f.* 6. 12 *Mod.* 607. See *Law. Mag.* 214.

If a person be taken without a warrant on a *Sunday*, and kept locked up till *Monday*, and then a writ got, *false imprisonment* lies. And for an arrest by process an attachment will be granted. 6 *Mod.* 96. *K. B.* and *false imprisonment* also lies. *Salk.* 78. *pl.* 1. And yet a defendant being arrested on a *Sunday* by a writ out of the *Marshalsea*, the court of *B. R.* denied to discharge him, on motion, but directed him to bring *false imprisonment*. 5 *Mod.* 95. *Barnes* 228.

But the bail may take the principal, and confine him till *Monday* and then render him; and a person that escapes may be taken. 6 *Mod.* 231. *Forsefc. Rep.* 374.

(F) *Where to be made.*

**A**N arrest must not be in the king's palace, *King's*  
where his royal person resides (a). *palace.*

The great mansion house, late parcel of possessions of the archbishop of *York*, and the park, and the soil of the ancient palace at *Westminster*, shall be the king's whole palace at *Westminster*, and shall extend to all the streets leading from *Charing Cross* to the *Sanctuary Gate* at *Westminster*, and in all the tenements on both sides of the street from the said *Cross* to *Westminster Hall*, situate between the *Thames* on the east, and park-wall on the west.  
*Stat. 28 H. 8. c. 12.*

An arrest by the sheriff in a liberty without a *A liberty.*  
*non omit.* is good, but the bailiff of the liberty may have an action against the sheriff for entering his liberty; but upon a *quo minus* the sheriff may enter any liberty (b).

An officer committed to the *Fleet*, for arresting *Palace-*  
an attorney of *C. B.* at the suit of an attorney of *Yard.*  
*B. R.* in *Palace Yard*, near the hall gate, the court then sitting, upon an attachment of privilege, and the defendant was discharged on filing common bail. *2 Mod. 181.*

Plaintiff immediately after a trial in *C. B.* was *Court.*  
arrested at suit of the defendant by process of *B. R.*  
the plaintiff was discharged, and the defendant  
fined. *Goldsb 33.*

A defendant going to the court to give security of the peace is privileged for the time. *Comberb. 29.*

An arrest in *Westminster-Hall*, *sedente curia*, may *Lil. Abr.*  
be discharged on motion, if on mesne process, but *115. (F)*

(a) *6 Mod. 73. 3 Salk. 91. pl. 1. 284. pl. 12.*  
*2 Ld. Raym. 978. Cas. Temp. Holt C. 7. 590.*  
*pl. 2. Prynne's 4 Inst. 19. 3 Inst. 140, 141.*

(b) *Lil. Abr. 115. b. Read. Stat. Law 116.*  
*See Barnard. K. B. 282, 444.*

## Arrests in Civil Cases.

not on execution; yet in that case the officer is punishable. 3 *Salk.* 46. *Fulfr.* 89. But it is said, such arrest is allowable where the defendant is not privileged by his attendance upon business in some court, nor otherwise privileged by some special rule or order of court; for it is the business and not the place that protects him. 2 *Lib. Abr.* 115. (F)

A witness *subpoena'd*, is privileged in going or returning. *Vent.* 11. *Mod. Rep.* 66. pl. 13. 2 *Lil. Abr.* 456. (H) 492 (G) (H) *Gilb. Hist. C. P.* 209. *Law of Evid.* 28. pl. 46. 29. pl. 47. *Tri. per Pais* p. 330. *Bac. Abr.* 565. 4 *Bac. Abr.* 222. *Gilb. Cas.* 308. 2 *Str.* 986. 4 *Bac. Abr.* 226. *Fortsc. Rep.* 164. *Styl. Rep.* 395. *Kebl. Rep.* 220. pl. 28.

*Pretended  
privileged  
places.*

The sheriffs of London and Middlesex, head bailiff of the liberty of the duchy of Lancaster, high sheriff of Surrey, bailiff of the borough of Southwark, or their officers, on request are to take the *posse comitatus*, or such other power as seems requisite, and enter the pretended privileged places of *White Fryars, Savoy, Salisbury-Court, Ram-Ally, Mitre-Court, Fuller's Rents, Baldwin's Gardens, Montague-Close* or the *Minories, Suffolk-Place* or the *Mint, Clink* or *Deadman's Place Wapping, Stepney*, or other place in the bills of mortality, and arrest, and in case of resistance, or refusal, to open the door, to break open any doors to arrest the body, or seize the goods by execution or extent. See *Stat.* 8 & 9 *W. 3. c. 27.* 9 *G. c. 28.* 11 *G. c. 22.*

## (G) How made.

*Speed.*

THE officer to whom any warrant is directed and delivered, ought with all speed and secrecy to execute it. *Dalt. Sher.* 103.

*Assistants.*

By the common law, every man is bound to assist not only the sheriff in executing the king's writs, but also his bailiff that has his warrant. 2 *Infl.* 193.

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An arrest without shewing the warrant, and without telling at whose suit, until it be demanded, is legal; and a person being arrested by a bailiff, is in his custody for all causes for which the sheriff had made his warrants against him. *Cro. Jac.* 485, 486.

If a bailiff who has a warrant against a man only say, *I arrest you at the suit of A. B.* it is not sufficient, but he must actually lay hold of him, or touch him, otherwise it is no arrest. *Cro. Jac.* 486. *Salk.* 79.

A sheriff may not break open a house to take execution, unless in the king's case, or for a contempt, &c. *Cro. Eliz.* 908.

*Of breaking open doors.*

But if a bailiff touches a person's hand, either as he puts it out of a window, or the bailiff puts in his hand and touches him (he having a warrant to take him) he is then his prisoner, and he may justify breaking open the house to take him away. *Vent.* 306. *7 Mod.* 8.

## (H) Of preventing arrests.

**I**F a bailiff has a warrant to arrest a man, and another hinder him from doing it, there being no actual arrest, it is not a rescous, but it is a contempt of the court. *6 Mod. Rep.* 210.

## (I) The fees on an arrest.

**N**O sheriff, under-sheriff, bailiff of a franchise, or other bailiff, shall take any thing of any person arrested or attached, for fine, fee, suit of prison, letting to bail, or shewing any ease or favour, except to the sheriff 20*d.* the bailiff which makes the arrest or attachment 4*d.* and the gaoler, if the prisoner be committed, 4*d.* on forfeiture of treble damages to the party aggrieved, and 40*l.* one moiety to the king, and the other to the informer. Provided that the warden of the Fleet, and of the palace at *Westminster*, be not damaged thereby. *Stat. 23-H. 6. c. 10.* For actions brought



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brought on this statute, &c. see 5 *Mod. Rep.* 225. *Salk.* 373. or the *Law of Arrests* 75, 76, 77. And see the first article following.

(K) *Treatment under arrests.*

*Clause to  
be delivered  
on ar-  
rest.*

**N**O sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister, to convey or carry any person by him arrested, or being in his custody by virtue of any writ, process, or warrant, to any tavern, alehouse, or other public drinking house, or to the private house of such officer, or of any tenant or relation of his, without the consent of the person in custody; nor charge him for liquors, victuals or other things more than he shall freely call for; nor cause or procure him to call or pay for such liquors or things, except what he shall particularly ask for; nor demand, take, or receive, or cause to be demanded, &c. directly or indirectly, any other sum than by law allowed for arrest, taking, detaining or waiting 'till the person in custody has given appearance or bail, agreed with the plaintiff, or is sent to the proper gaol of the county, &c. nor exact or take any reward for keeping the person in custody out of prison; nor carry him to prison within 24 hours from the time of arrest; nor take more for lodging, diet or other expences, than allowed by the justices at the quarter-sessions, who are required to make a standing order for ascertaining such expences. And every person intrusted with the execution of such process, must deliver a printed copy of the above clause to every officer employed to execute warrants, and it must be a part of the condition in the officer's security, that he will deliver a copy of the said clause to every person he arrests and carries to any house, and permit him or any friend to read it, before any liquor or meat be called for; and if any officer permit liquor or victuals to be called for, before it be so read, such neglect, besides breach of the said condition, is a misdemeanor in the execution of Process. And every sheriff, gaoler, &c. to permit every



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every person arrested to send for beer or other food from what place they please; and to have such bedding or other things as they think fit, without purloining or detaining the same, or requiring them to pay for using thereof, or putting any difficulty upon them relating thereto. *Stat. 32 G. 2. c. 28.*

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### (A) *By a sheriff.*

**H**E is the principal conservator of the peace within his county, and may *ex officio* award process of the peace, and take surety for it. *Vid. (D) post.*

### (B) *By a coroner.*

**H**E is another principal conservator of the peace within the county, and may bind a person to the peace, except where surety is taken by him as judge of his own court for an affray done in such court. *Umfreville's Intr. to his Lex Coronatoria [XXIX.]*

### (C) *By a justice of peace, and by his command.*

**J**ustice of peace by word of mouth may authorize any person to arrest another for breach of the peace in his presence, or for a riot in his absence. *Haw. P. C. B. 2. c. 13. § 14. Haw. P. C. B. 1. c. 65. § 16.* *By parol.*

And if a justice finds persons riotously assembled, he alone may arrest the offenders, and bind them to good behaviour, or imprison them, for want of bail. *Haw. P. C. B. 1. c. 65. § 16.*

A justice of peace may grant his warrant to arrest, for treason, felony, *præmunire*, or other offence against the publick peace; and where any statute gives him jurisdiction over an offence, or a power to require a person to do a certain thing mentioned *By warrant.*

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mentioned in the statute, by implication it gives him power to grant his warrant for that purpose.  
2 *Hawk. P. C.* 84.

But he can't grant a general warrant to search all suspected houses in general for stolen goods.  
*Ibid.* 82. *Hale's Pl. Cr.* 93. 2 *Stat. Hist.* 150.

The safest way of proceeding for the person that has the suspicion, is to make the arrest in his proper person, and get a warrant from a justice to the constable to keep the peace. 2 *Hawk. P. C.* 85.

A justice cannot grant a warrant for the peace or good behaviour against a lord of parliament, (that must be by *subpœna* out of *Canc.*) yet one justice may against another. *Hawk. Pl. Cr.* 127.

He that demands surety of the peace, must make oath of blows given, or that he stands in fear of his life, or some bodily hurt, or that he fears another will burn his house, &c. before a justice can grant his warrant. *Str.* 473.

### (D) By mayors and bailiffs of towns.

**M**AYORS and bailiffs of corporations are justices of the peace *pro tempore*.

3 *Inst.* 160.  
5 *Co.* 71.  
3 *Mod.*  
117.

None (except the king's servants in his presence, and his ministers in executing their offices, and their assistants, or upon a cry made for arms to keep the peace) must go before the king's justices or ministers doing their office, with force, in affray of the country, nor go or ride armed in fairs, markets, nor in the presence of the justices or other ministers, nor elsewhere; upon pain to forfeit their armour to the king, and their bodies to be committed to prison at the king's pleasure. And the king's justices in their precincts, sheriffs and other ministers in their bailiwicks, lords of franchises and their bailiffs, and mayors and bailiffs of cities and boroughs, and burgholders, and wardens of the peace, to execute this act. *Stat. Northampton*, 2 *E.* 3. c. 3. This act was enforced by *Stat.* 7 *R.* 2. c. 13. and 20 *R.* 2. c. 1. But at this day it is held, that the wearing of arms upon the road, is not within the meaning

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meaning of this statute, unless it be accompanied with such circumstances as may reasonably create terror; and that persons of quality may arm their attendants as well as themselves for their greater security in travelling. 5 *Read. Stat. Law* 77.

And a justice of peace or head officer of a city or town corporate may convict a person of drunkenness. *Stat. 21 Jac. c. 7.* And punish tiplers. *Stat. 4 Jac. c. 7.* And enter places where unlawful gaming is suspected to be used, and imprison the keepers of the same, and the players, till sureties found not to use or play at such places. *Stat. 33 H. 8. c. 9.*

And justices of peace, sheriffs, under-sheriffs, mayors, bailiffs of cities and corporations, high and petty constables, and other peace officers, and other persons commanded to assist, may seize rioters who don't disperse in an hour after proclamation, and carry them before a justice. *Stat. 1 G. c. 5.*

And bailiffs of towns may arrest such persons as they suspect against the peace, on *Stat. Winchest. (13 E. 1. c. 2.) c. 4.* *Hawk. P. C. B. 2. c. 13. § 12.*

### (E) By constables.

**I**F a man lays murder or felony to another's charge, or suspect him of murder or felony, he may declare it to the constable, who ought to take him before a justice: And if by common fame a man be suspected, the constable ought to arrest him, and bring him before a justice, tho' there be no accusation or declaration. *Bacon's Office of Const. Hal. Hist. Pl. Cr. 587.*

*Without warrant.*

An unlawful arrest without warrant cannot be made good by warrant taken out afterwards. *Hawk. P. C. B. 2. c. 13. § 9.*

*By warrant.*

If constable after arrest by warrant suffers the offender to go at large, upon a promise to come again at such a time to find sureties, he cannot arrest him again by the same warrant. But if the offender returns and puts himself again into custody, he may detain

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detain him and bring him before the justice pursuant to the warrant. *Ibid.*

He cannot justify an arrest by a justice's warrant, which expressly appears in the face of it, to be for an offence out of the justice's jurisdiction, or to bring the party before him at a place out of the county for which he is a justice; but may execute a general warrant to bring a person before a justice, to answer such matters as shall be objected against him on the part of the king, for he may presume the justice's cognizance unless the contrary appears. *Ibid.* § 10. But see 2 *Inst.* 521.

A warrant directed to a constable or private person, to arrest a particular person for a misdemeanor within the justice's jurisdiction may be executed, whether the person in the warrant be guilty or not, be indicted for the same offence or not, or whether any felony were committed or not; for he that executes it is not answerable for the justice's proceedings, but he alone. *Ibid.* § 11.

A constable, if he will, may execute a warrant directed to him by name in any place in the county, though he need not go out of his own parish; otherwise if directed to all constables. *Salk.* 175. 3 *Salk.* 99.

He may carry an offender either before the justice that granted the warrant, or any other at his election; if the warrant don't direct the offender to be brought before him that granted it. 5 *Rep.* 59.

*London.*

And constables in *London* are to keep the peace to the utmost of their power, arrest affrayers, rioters, breakers of the peace, and carry them to the house of correction, or *Compter*; and in case of resistance to make outcry on them, and pursue them from street to street, and from ward to ward till they be arrested. And they are to assist the watch, and the watch are to obey their orders in conveying offenders to the *Compter*, till examined and punished by the lord mayor, &c. And he may execute warrants, &c. throughout the city upon occasion. *Vid. Law of Arrests*, pl. 2. c. 7.

And



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And by *stat. 10 G. 2. c. 22.* In *London* constables to apprehend night-walkers, malefactors and suspected persons, who shall be found wandering or misbehaving themselves, and carry them as soon as may be before a justice.

### (F) *By watchmen.*

**I**N *London* a watchman, in the absence of the constable may apprehend all night-walkers, malefactors, rogues, vagabonds, and disorderly persons whom they find disturbing the peace, or shall have just cause to suspect of any evil designs, to deliver them to the constable, who is to carry them before a justice. *Stat. 10 G. 2. c. 22.*

### (G) *By private persons.*

**A**LL persons present when felony is committed, or dangerous wound given, are obliged to apprehend the offender, otherwise they are liable to be fined and imprisoned for their neglect, unless at that time under age. *Hawk. P. C. c. 12. § 1.*

*By command of the law.*

Also private persons are with the utmost diligence, upon hue and cry, to pursue and endeavour to take such offenders, tho' not present when the offence was committed. *Ibid. § 4. vid. tit. Hue and Cry.*

And they are obliged to assist an officer (demanding their help) in taking felons, suppressing affrays, or apprehending affrayers, &c. *Ibid. § 7.*

Arrests by private persons *by their own authority* may be on suspicion of treason or felony being already done, or to prevent their being done, or in respect of inferior offences. *Ibid.*

*By permission of law.*

The *causes of suspicion*, which will justify the arrest of an innocent person are, 1. The common fame of the country upon some probable ground. 2. The living a vagrant and disorderly life, without any visible means to support it. 3. The being in company with one known to be an offender, at the time of the offence; or generally at other times with



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with persons of scandalous reputations. 4. The being found in such circumstances as induce a strong presumption of guilt; as coming out of a house wherein murder has been committed, with a bloody knife in one's hand; or being found in possession of part of the goods stolen, without being able to give a probable account of coming honestly by them. 5. The behaving one's self in such manner as betrays a consciousness of guilt; as where a man being charged with treason or felony, says nothing to it, but seems by his silence to own himself guilty; or where a man accused of any such crime, upon hearing that a warrant is taken out against him does abscond. 6. The being pursued by hue and cry. *Ibid.* § 9, 2, 10, 11, 12, 13, 14.

But no causes of suspicion, how many probabilities soever there be, will justify the arrest of an innocent man, by one who is not himself induced to suspect him to be guilty, whether he makes such arrest of his own head, or in obedience to the commands of a private person, or even of a constable. *Ibid.* § 15.

Any person may lay hold of another, whom he sees upon the point of committing treason or felony, or doing any act which would manifestly endanger the life of another, and may detain him till it may be presumed he has changed his purpose. *Ibid.* § 19.

A private person of his own authority cannot arrest one for a breach of peace after it is over. But he may arrest a common notorious cheat, going about the country with false dice, and being caught playing with them, in order to bring him before a justice, and it seems he may justify an arrest for any crime prejudicial to the public. *Ib.* § 20.

*Rewarded  
by law.*

1. *Robberies.*

Every person who shall take and prosecute till convicted any robbers in the highway, passage, field, or open place, shall have 40 *l.* for every offender; (but if a person be killed in apprehending them, his executors or administrators shall have it) and such person shall have the horse, furniture, arms, money, or other goods taken with the robber, provided

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provided they were not feloniously taken from any person. *Stat. 4 & 5 W. & M. c. 8.*

And the streets of *London and Westminster*; and other cities, towns and places are deemed highways within that act. *Stat. 6 G. c. 23.*

If any person apprehend and convict any offenders for counterfeiting the coin, or for diminishing it for gain, or bringing any clipt or counterfeit coin into this kingdom, he shall have 40*l.* for every offender. *Stat. 6 & 7 W. 3 c. 17.*

The like as to any offender who privately and feloniously steals goods of the value of 5*s.* or more, by day or night in any shop, warehouse, coach-house or stable (altho' such shop, &c. be not broke open, nor the owners or other person be not in it to be put in fear) or those that shall assist, hire or command any person to commit such offence.

The like reward on conviction of any person guilty of burglary, or feloniously breaking and entering any house in the day time; or if the party pursuing be killed, his executors or administrators to have it. *Stat. 5 A. c. 31.*

The like reward on conviction of persons for taking rewards for helping persons to their stolen goods, such persons not having apprehended the felon that stole them, and brought him to trial and given evidence against him.

And if any person armed, and being disguised, appear in any forest, &c. inclosed wherein deer are usually kept, or in any highway, heath, common or down, or unlawfully and wilfully hunt, wound, kill or steal any red or fallow deer; or rob any place where conies or hares are usually kept; or steal fish out of any river or pond; or unlawfully and wilfully hunt, &c. any red or fallow deer, kept in any of his majesty's forests or chases inclosed, or in any park, &c. inclosed, where deer are usually kept; or unlawfully and maliciously kill, maim or wound any cattle, or cut or destroy any trees planted in any avenue, or growing in any orchard, garden, or plantation; or set fire to any house, barn or outhouse, or to any hovel, cock, mow

2. Counterfeitters and clippers of coin.

3. Shoplifters.

4. Burglars.

5. Taking rewards for helping to goods stolen.

6. Being armed in disguise, &c.

## Arrests in Criminal Cases.

mow or stack of corn, straw, hay or wood; or wilfully and maliciously shoot at any person; or knowingly send any letter without a name subscribed, or signed with a fictitious name, demanding money, venison or other valuable thing, or forcibly rescue any person, lawfully in custody of an officer, or other person, for any of the said offences; or by gift or promise of reward, procure any other to join with him in any such unlawful act; and any person apprehending or causing such offenders to be convicted, and shall be killed, or wounded, so as to lose an eye, or the use of a limb, in apprehending such offenders, the person wounded, or executors, &c. of a person killed shall have 50 *l.* reward. *Stat. 9 G. c. 22.* made perpetual by 31 G. 2. c. 42. *f. 2.*

And the said act to extend to unlawful and malicious breaking or cutting down the bank of any river or sea bank, cutting hop binds, or setting on fire any delph of coal. *Stat. 10 G. 2. c. 32.* made perpetual by 31 G. 2. c. 31.

(H) *Of opposing, preventing and flying from arrests.*

**T**O oppose one who lawfully endeavours to arrest another for treason, knowing the party to be guilty, is treason, and he that so opposes an arrest for felony, is an accessory to it; or whoever knows him to have committed such crime, receives and comforts him, and endeavours to favour and aid him in making his escape, becomes a principal in treason, or an accessory in felony, tho' he use no force in giving such assistance to the offender; but if he barely receive him, and permit him to escape, without giving him any advice, assistance or encouragement in it, he is only guilty of a high misdemeanor, and not a capital offence, nor is the party himself that flies from an arrest, but he is liable to forfeit his goods. And whoever, in any case, refuses to undergo that imprisonment

sonment which the law puts upon him, and frees himself from it by any artifice, before he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. *Hawk. P. C. B. 2. c. 17. § 1, 2, 3, 5.*

## (I) Of breaking open doors.

**T**HE law never allows such extremities but in cases of necessity, after signifying to those in the house the cause, and requesting admittance, and then allowable in the following instances.

1. Upon a *capias* grounded on an indictment for any crime, or upon a *capias* from *B. R.* or *Canc.* to compel a man to find sureties of the peace or good behaviour, or even upon a warrant from a justice, for that purpose.
  2. Upon a *capias utlagat* or *capias pro fine* in any action.
  3. Upon a justice's warrant for levying a forfeiture in execution of a judgment, or conviction for it, grounded on any statute which gives the whole, or but part of such forfeiture to the king, and authorises the justice to give such judgment or conviction for it.
  4. Where a forcible entry or detainer is either found by inquisition before justices of peace, or appears upon their view.
  5. Where one known to have committed a dangerous wound, is pursued, either with or without a warrant, by a constable or private person; but not where one lies under a probable suspicion only.
  6. Where an affray is made in a house in the view or hearing of a constable; or where those who have made an affray in his presence fly to a house, and are immediately pursued by him.
  7. Where-ever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house.
- 2 Hawk. P. C. c. 14.*

**Attornies.**



## Attornies.

*King's Bench, Common Pleas, and Exchequer.*

*Admittance into inns.*

**A**Ttornies to be admitted of some of the inns, and take chambers or lodgings near them, except inhabitants or housekeepers in *London, Westminster, Southwark* or the suburbs, and the liberty of the tower of *London*, and *St. Catherine's* there; and sworn attornies of any courts within the said cities, towns, and liberties. And no person to be sworn or admitted an attorney or clerk, (except the persons before excepted) unless so admitted in an inn, and to produce, when sworn or admitted an attorney or clerk, a certificate thereof, from the treasurer or principal of the inn. And not to put himself out of one inn, till admitted into another. And to be in commons according to the orders of such inn. *By the 12 judges, M. 3 An. 1704. and other rules of court, Trin. & Mich. 36 Car. 2. B. R. Mich. 1654. Trin. 29 Car. 2. & Mic. 36 Car. 2. C. B.*

*P. R.*

**A**Ttornies to appear in court in person on or before the 14th day of *Michaelmas* term, and on or before the 7th day of every other term. *Reg. T. 14 Car. 2.*

Clerks and attornies to attend the court on notice given them of motions, or forfeit 10s. *Reg. E. 1656. E. 14 Car. 2.*

Attornies personally to attend the master at the time by him pre fixed (on having notice thereof)

*C. B.*

**O**fficers and attornies to appear in person in court upon or before the 14th day of *Michaelmas* term, and on or before the 7th day of every other term. *Reg. M. 1654. H. 14 & 15 Car. 2. E. 1 Jac. 2.* Attornies dismissed by one court for a misdemeanor (after certificate) not to be admitted to practice in another. *Reg. M. 1654.*

Whoever would be admitted an attorney, must



R. R.

thereof) to examine  
causes referred to him,  
on forfeiture of 10 s.  
*Reg. H. 15 Car. 2.*

Clerks, philazers, and  
attornies to pay to the  
clerk of the declarations  
2 s. at the end of every  
term, or be suspended.  
*Reg. M. 15 Car. 2. E.*  
*19 Car. 2.*

No attorney of this  
or any other court, to  
be bail in any action or  
suit in this court, or  
lessee in ejectment. *Reg.*  
*M. 1654. Reg. M. 14*  
*G. 2.*

Such attornies as have  
not been attending their  
employment by the space  
of one year last past,  
unless hindered by sick-  
ness, shall not be allow-  
ed their privilege of at-  
tornies. *Reg. M. 1654.*

One cannot change  
his attorney in a suit  
without good cause, and  
leave of the court; and  
the attorney newly com-  
ing in is to take notice,  
at his peril, of the rules  
whereunto the former  
attorney was liable, had  
he continued. *Reg. M.*  
*1654.*

Writs of privilege to be marked by the clerk of  
the warrants. *Reg. T. 29 Car. 2. T. 9 W. 3. C. B.*

Every attorney of this court, who shall sue out  
any attachment of privilege against any defend-

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dants,

C. B.

must apply before the  
last week in term. *No-*  
*tice in the office, M. 2.*  
*G. 2.*

Attorney to continue  
and cause all his busi-  
ness to be entered in that  
prothonotary's office  
wherein he is sworn.  
*Reg. T. 21 Car. 2. M.*  
*2 G. 2.*

Not to be lessee in  
ejectment, nor bail in  
this court in any action.  
*Reg. Mic. 1654. Reg.*  
*M. 6 G. 2.*

Such attornies as have  
not been attending their  
employment in this court  
for one year last past,  
unless hindred by sick-  
ness, not to be allowed  
their privilege. *Reg. M.*  
*1654.*

No person without  
rule of court, order of a  
judge or prothonotary,  
and notice to the ad-  
verse party or his at-  
torney, to change his  
attorney; and the at-  
torney newly coming in,  
to take notice at his pe-  
ril of the rules whereto  
the former attorney was  
liable, had he continued.  
*Reg. M. 1654.*

## Attornies.

dants, shall leave a *præcipe* with the signer of the writs, with the defendants names not exceeding four in each writ, with the return and day of signing such writ, with the agent's or attorney's name, who sued out the same. *Reg. H. 20 G. 2.*

A *præcipe* for attachment of privilege to be left at the prothonotary's office, with the defendants names not exceeding 4, with the return-day, day of signing, and agent or attorney's name who sues it out. *Reg. H. 11 G. 2. C. B.*

Notice in writing of a bill filed against an attorney, if the action be laid in *London* or *Middlesex*, and he lives within 20 miles of *London*, to be delivered to him, or his agent, or left at his usual place of abode, (and a rule for appearance given as usual) 4 days, exclusive of the day of giving notice, before forejudger; and if the action is laid in any other county, and he lives above 20 miles from *London*, no forejudger, till 8 days after such notice and rule. *Reg. H. 11 G. 2 C. B.*

Attornies may use common abbreviations in their bills. *Stat. 12 G. 2. c. 13.*

Recusant convict not to practice as an attorney or solicitor. *Stat. 3 J. c. 5.*

If any person convicted of forgery, or wilful and corrupt perjury, practice as an attorney, solicitor, or agent in any suit or action, the judges of the court where such suit or action is brought, on complaint or information, to examine the matter in a summary way in open court; and if it appears that he has offended, the judges may cause him to be transported for 7 years. *Stat. 12 G. c. 29.*

If an attorney or solicitor die, before the time his clerk is bound for be expired; or if the contract be vacated by consent; or if the clerk be discharged by rule or order of court; then the service to any other attorney or solicitor during the residue of the term is good. Attorney or solicitor not to have more than two clerks at the same time, bound by contract in writing. *Stat. 2 G. 2. c. 23.*

Fees

Fees, or disbursements not to be sued for, till after a month from a bill being delivered or left at the client's last place of abode; which bill to be subscribed with the proper hand of the attorney or solicitor. And upon application to the court where the greatest part in value of the business has been transacted; the bill to be taxed, without any money being brought into court; and if the attorney or solicitor neglect to attend the taxation, having due notice, the officer to tax the bill *ex parte*. (pending the reference and taxation no action to be brought for the said demand) and upon taxation, the party to pay the attorney or solicitor the sum due, or be liable to an attachment or such other proceedings, at the election of the attorney or solicitor, as such party was before liable to; and if on such taxation it shall be found, that the attorney or solicitor shall have been overpaid, he shall refund to the party intitled, or to any person by him authorised, if present at the settling thereof, or otherwise as the court shall direct, all the money, that the officer shall certify to have been overpaid; and in default thereof, the attorney or solicitor shall in like manner be liable to an attachment, or process of contempt, or such other proceeding, at the election of the party, as he would have been subject to, if this act had not been made; and the said courts are required to award the costs of such taxation, to be paid by the parties according to the event of the taxation, *viz.* if the bill taxed be less by a sixth part than the bill delivered, then the attorney or solicitor is to pay the costs; but if it be not less, then the court in their discretion shall charge the attorney on client in regard to the reasonableness or unreasonableness of such bills. *Stat. 2 G. 2. c. 23.* made perpetual by 30 Geo. 2. 19. *f. 75.*

*Stra. 633.*  
*Mofley 68.*  
*Pract.*  
*Reg. C. P.*  
*36.*  
*Rep. &*  
*Cas. of*  
*Pract. C.*  
*P. 27.*

The act requiring the delivery of a bill before suit, not to extend to bills between one attorney and another. 12 G. 2. c. 13.

Persons not legally admitted, not to practice as attorney in the county courts, on pain of 20 *l.* *Ib.*

## Attornies.

Quakers to be admitted on their affirmation. *Ibid.*

No attorney being in prison to commence any suit. *Ibid. vid. tit. Costs, Damages.*

Every person bound clerk to an attorney is within 3 months to cause an affidavit to be filed of the actual execution of the contract, specifying the date, and names and places of abode of the parties; and before he shall be admitted an attorney, affidavit shall be made and filed of his having actually served his time. *Stat. 22 Geo. 2. c. 46.*

## Attornment.

**G**RANTS good without it, *stat. 4 A. c. 16.* Of tenants to others void, except in consequence of judgments or decrees, or with the consent of the landlord, or in case of mortgages forfeited. *Stat. 11 G. 2. c. 19.*

## Audita Querela.

**N**OT to be allowed, nor bail thereupon taken, unless in court upon motion first made, and a rule thereupon entered. *Reg. T. 9 Jac. 1. B. R.*

An *audita querela* is no *supersedeas* of itself, and therefore a *supersedeas* must be actually sued out, and if the *audita querela* be grounded upon a deed, the court will not grant a *supersedeas* until the deed be proved in court.

If the *audita querela* be grounded on a matter of fact, or the party be not in custody, the process is a *venire* and *disfringas*; but if grounded on a record, or the party be in custody, the process is a *scire facias*.

Alwards,

## Awards.

### (A) *Matter of controversy,*

**I**S either of fact or of right in things and actions personal, and uncertain; but so as no freehold, tho' the submission is by deed, nor lease for years of land, may be adjudged from one to another. Thus debts on record, or upon bill, or on a certain contract, matters concerning matrimony or criminal offences, cannot be made matters of arbitrament; but if men enter into bond with condition (as is usual) to stand to the arbitrament or award, the bond may be forfeited for non-performance of the condition. *Wood's Instit.* 549. And *quære*, whether, if there is no bond, an action will not lie upon the mutual promises, according to late determinations? Or whether the party [*Ld. Raym.* 114, 234, 248.] may not be compelled in a court of equity to perform his part, tho' it relates to freehold, if he has accepted any part of the satisfaction awarded to him for it. *3 Wil. Rep.* 187.

### (B) *The submission.*

**A** Submission of the controversy to arbitrators is necessary, by giving them power to pronounce a sentence betwixt the parties. This submission may be *general*, as of all demands; or *special*, of some certain matters in controversy. It may be by word or writing, absolute or conditional. If the parties give a bond to each other (*which is the usual way*, *vid. first part for the form*) it must be word for word alike on both sides, only changing the names, &c. The submission may be with covenants to perform the award, if the parties please. There must be two parties at least to the submission, of capacity to compromise, or to make mutual promises, and to submit to the award. *Ibid.* 550.

Those who desire to end any controversy (for which there is no remedy but by personal action,



or suit in equity) by arbitration, may agree that their submission of the suit to the award or umpirage of any persons may be made by a rule of any of his majesty's courts of record, which the parties shall chuse, and may insert such their agreement in their submission, or the condition of the bond or promise, and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in court, the same to be entered of record, and a rule of court thereupon made, that the parties shall submit to and finally be concluded by such arbitration or umpirage; and in case of disobedience thereto, the party neglecting or refusing shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly; which shall not be stopped or delayed by any order, &c. of any other court, either of law or equity, unless it appear on oath, that the arbitrators or umpire misbehaved themselves, and that such awards were corruptly or unduly procured. And any arbitration or umpirage procured by corruption or undue means, shall be void, and set aside by any court of law or equity, so as such corruption or undue practice be complained of in the court where the rule is made for such arbitration, before the last day of the next term, after such arbitration made and published to the parties. *Stat. 9 & 10 W. 3. c. 15.*

The submission to an award by bond may be countermanded by deed. Such authorities in their own nature are revocable; as a letter of attorney; &c. tho' made irrevocable by express words. But then the bond is forfeited. If it had been without obligation, &c. one might revoke and forfeit nothing. *Wood's Inst. p. 551.* But *quære*, as it is now held that an action will lie on the mutual promises; and the cases of a submission to an arbitration, and a letter of attorney seem to be very different. *Wood ibid.*

(C) *The arbitrators,*

ARE private extraordinary judges chosen by the parties to give judgment between them to end the debate. Neither natural nor legal disabilities hinder any one of them from being an arbitrator. If they are incompetent judges, the fault is in those that choose them. If they observe the submission and keep within their jurisdiction, their sentences are definitive; from which there lies no appeal. They cannot assign their power, for they have but a bare authority. *Wood's Inst. p. 550.*

(D) *The arbitrament or award,*

IS the sentence or decree of the arbitrators, and is published when they have heard all parties. In making it (a) observe that, 1. It must be according to the very submission in respect of the persons and things submitted. 2. It ought to be equal, and not on one side only; for it must appoint either party to give or do something beneficial or advantageous. 3. The performance must be possible and lawful. 4. There must be a means by law to (b) attain unto the thing awarded. This is chiefly meant where the submission is without bond. 5. It ought to be *certain* and *final*, and to make an end of all controversies submitted; or if it is good only in reference to part of the things submitted, it must be final as to that part, or else it will be void. These things being observed, it shall not be unravelled in equity, or set aside at law, [2 *Ld. Raym.* 857] where the submission is made a rule of court, unless there was corruption or gross misbehaviour [3 *Peer Wil. Rep.* 361. 2 *Vern. Rep.* 251, 514] in the arbitrators. If all things are done *bona fide*, the arbitrament shall be

D 4

expounded

(a) *Ld. Raym.* 123.

(b) 2 *Ld. Raym.* 964, 1040.

## Bail in Civil Cases.

expounded according to the (c) intent of the arbitrators, if agreeable to law, and not literally. *Wood's Inst. ib.*

(E) *An umpirage,*

**I**S where there is but one arbitrator; and is usually when the parties submit themselves to the arbitrament or award of certain persons, and if they cannot agree, or are not ready to deliver their award in writing before such a time, then to the judgment of another as *umpire*. This is often the effect of the bond of submission. *Id. ibid.*

## Bail in Civil Cases.

*Vid. title Arrest. Audita Querela. Error. Habeas Corpus.*

*Who may not be bail.* **N**O sheriff's officer, bailiff, or the person concerned in the execution of process shall be bail in any action or suit in this court. *Reg. M. 14 G. 2.*

*Of putting in bail.* Where the defendant is arrested in *London* or *Middlesex*, and gives a bail-bond, he has four days (exclusive) after the return of the process to put in bail; and when arrested in any other county 6 days. *Reg. M. 8 A.*

*C. B.* **T**HE like in this court. *Reg. M. 6 G. 2.*  
*Vid. tit. Attornies,*

The defendant or his attorney, who puts in bail to any filazer's writ, shall have recourse to the proper filazer, and either come with him or his clerk into court, or attend a judge to take such bail. *Reg. Trin. 1 W. & M.*

In Bails

# Bail in Civil Cases.

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B. R.

In taking a recognizance these words must be used.

“ **Y**OU (*calling the bail by their names*) do jointly and severally undertake, that if the defendant (*naming his name*) shall be condemned in this action, at the suit of the plaintiff (*naming his name*) he shall satisfy the costs and condemnation, or render himself into the custody of the marshal of the *Marshalsea* of the court of *King's Bench*, or you will pay the costs and condemnation for him.” *Rule for taking bails before commissioners, T. 4 W. & M.*

Affidavit of taking such bail, to be made either before some judge of this court, to whom the bail shall be trans-

C. B.

Bails may be taken in the filazer's absence, at the judge's chambers. *Notice in the judge's chambers, H. 8 G. 2.*

The condition of a recognizance to be of this effect.

“ **Y**OU (*naming the defendant if present*) do acknowledge to owe to the plaintiff 20*l.* and you (*naming the bail*) do severally acknowledge to owe unto the same person, the sum of 10*l.* a piece, to be levied upon your several goods and chattels, lands and tenements, upon condition, that if the defendant be condemned in the said action, he shall pay the condemnation money, or render himself a prisoner in the *Fleet* for the same, and if he fail so to do, you (*naming the bail*) do undertake to do it for him.” *Reg. for taking bails in the country, E. 5 W. & M.*

The like in this court, *Affidavit of taking it.*  
*per Reg. supra.*

D 5

mitted,



## Bail in Civil Cases.

B. R.

mitted, or before some person impowered to take affidavits in this court. *Ead. Reg.*

Commis-  
sioner's  
book.

Commissioner to keep a book to enter in the names of the defendant and his bail, and the plaintiff's name, as in the bail piece, and the time of taking thereof, and the name of him by whom such bail shall be transmitted; and also the defendant's attorney's name. And the plaintiff's attorney is at liberty to repair to the commissioner's book, that he may inquire of the sufficiency of the bail. *Ead. Reg.*

Notice of  
bail put  
in.

Transmit-  
ting bail.

Bail taken before a commissioner within 40 miles of London and Westminster, to be transmitted to one of the judges of this court, within 8 days after taking it; and if taken above that distance, to be transmitted in 15 days; unless all the said judges be in their cir-  
cuits.

C. B.

Commissioner to keep a book purposely for entering the names of the defendant, and his bail, and the plaintiff's name as it is in the bail piece, and the time of taking thereof, and the name of him by whom such bail shall be transmitted. And the plaintiff's attorney is at liberty to repair to the commissioner's book, that he may inquire into the sufficiency of the bail. *Ead. Reg.*

Defendant's attorney to give notice to the plaintiff's attorney of the taking bail, within four days after taking thereof. *Reg. M. 13 G. 2.*

Bails taken by a commissioner within 40 miles from London and Westminster, to be transmitted to one of the judges of this court, within 10 days after taking thereof; and if taken above that distance, to be transmitted within 20 days after the caption; unless all the said judges be

B. R.

enits, and then as soon as any of them return to chambers. *Reg. T. 14 W. & M.*

C. B.

be in their circuits, and then as soon as any one of them returns to London. *Reg. E. 5 W. & M. & H. 6 G. 1.*

After bill is transmitted (*as above*) it is to be forthwith delivered to and filed with the proper officer, or it is as no bail; and the plaintiff is at liberty to proceed on the bail-bond; and the defendant, if he be admissible to plead to the original action, not to be admitted so to do, unless he first pay the full costs to the plaintiff for the prosecution on the bail bond; and plead as of the time when bail should have been duly entered. *Reg. H. 6 G. 1.*

And by *Reg. M. 6 G. 2.* all bails taken before commissioners in the country, shall be transmitted to, and filed with the proper officer, according to the said rules, and no such bail shall be received or filed, unless transmitted within the respective times as above, without leave of court. *C. B.*

But by another rule of *M. 13 G. 1. (i. e. made before the last mentioned rule, and after the next before it)* it is ordered that all bails taken before commissioners, and transmitted to, and allowed by one of the judges of this court, shall be delivered to the clerk of the judge, which clerk shall take the fees due to the proper officer for the entry thereof, and shall forthwith deliver the said bail to be filed, and pay the said fees to such officer. *C. B.*

B. R.

If the plaintiff does not except against the bail put in before a judge *de bene esse* on *cepi corpus*, within 20 days after notice of its being put in, then upon affidavit of the notice indorsed on the back of the bail-piece (for which oath

C. B.

In all cases wherein bail-bonds are taken, and the same bail is put in above, the plaintiff may except against it. *Reg. M. 6 G. 2.*

If upon inspection of a commissioner's book (*vid. ante*) the bail are found insufficient, the plaintiff's

*Excepting against bail.*

## Bail in Civil Cases.

### B. R.

oath no fee to be taken) the bail to be affiled by the defendant's attorney within 4 days after the end of the aforesaid 20 days. *Reg. M. 16 Car. 20.*

No exception to special bail put in before a judge, to be made after 20 days from notice given of its being put in; and an exception after that time shall be void. *Reg. 8 A.*

The like time also allowed after bail transmitted and notice given, where they are found insufficient on inspection of the commissioner's book. *Reg. T. 4 W. & M.*

*Perfecting  
bail.*

And in the last mentioned case, the defendant must either put in better bail, or the cognisors must justify themselves in court, either by affidavit taken before the commissioner that took the bail, or by oath in court, or before a judge of the court. *Ead. Reg.*

Where special bail is put in, and excepted against, and notice of exception is given in writing to the defendant's attorney, the defendant must procure his bail to justify (if notice

be

### C. B.

plaintiff's attorney may except against them within 20 days after transmitted, and notice given thereof. *Reg. B. 5 W. & M.*

Exception in all cases must be made, either in the philazer's book, or on the bail-piece with the commissioner, before it is transmitted, and afterwards above in the philazer's book, or on the bail-piece. *Per Cur' M. 3 G. 2.*

And if excepted to according to the above rule of *E. 5 W. & M.* the defendant must either put in better bail, or the cognisors must justify themselves in court, either by affidavit taken before the commissioner that took the bail, or by oath in court, or before a judge of the said court. *Ead. Reg.*

If special bail put in by the defendant be excepted to, the defendant to perfect it within 4 days after exception taken; in default thereof

of

## Bail in Civil Cases.

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**B. R.**

be given in term time) in 4 days after notice, or they must add other bail who must justify

within the said 4 days: But if exception and notice thereof be in the vacation, the bail put in, or other additional bail, must justify upon the first day of the subsequent term. *Reg. E. 5 G. 2.*

*Note;* If bail be taken before a judge, justification must be in court, unless the plaintiff's attorney consent for it to be at a judge's chambers.

The bail being impleaded by action of debt on the recognizance, has 8 whole days after the return of the *latitat*, or other process against such bail, to surrender the defendant into the custody of the marshal in their discharge. And upon notice thereof to the plaintiff or his attorney, further proceedings against them to stay. *Reg. T. 1 A.*

And when impleaded on *sci. fac.* the bail may surrender the defendant, at any time before the return of the *alias sci. fac.*

On surrender, notice to be forthwith given to the plaintiff's attorney, and affidavit thereof made before bail discharged *Reg. T. 1 A.*

**C. B.**

of the plaintiff may proceed upon the bail-bond. *Reg. T. 3 & 4 G. 2.*

The principal surrendering himself, after bail put in, and before or on the day of appearance of the *sci. fa.* returned *scire feci*, or of the second *sci. fac.* returned *nihil*, or if an action of debt be brought upon the recognizance against the bail, then if the principal renders himself upon or before the process returned served, no farther proceedings to be against the bail. *Reg. M. 1654.*

Summons to stay proceedings on bail-bond, on suggestion that defendant had surrendered, set aside, because the bail was excepted to, and the render made before justification. *M. 4 G. 2.*

*Of surrender in discharge of bail.*

And on surrender in court, or before a judge, the *reddidit se* to be left with the secondary, or clerk



## Bail in Civil Cases.

clerk of the judge, to be filed; and a copy or note thereof, under the hand of the judge or secondary, to be delivered to the marshal at the time of commitments; such note or copy to be made by the person surrendered, or his attorney. *Reg. T. 3 A.*

When the defendant is surrendered, get a certificate from the prison of the defendant's being in custody, and then get the master to discharge the bail piece, for till then the bail are liable.

If an action of debt be brought on the recognizance, there shall be inserted in the writ, after the words *in a plea of trespass*, the following clause; *And also to a bill of the said plaintiff against the said defendant in a plea of debt upon recognizance according to the custom of our court, before us to be exhibited*; otherwise the defendant's attorney shall not be obliged to accept a declaration in a plea of debt upon such recognizance. *Reg. E. 15 G. 2.*

## Bail in Criminal Cases.

### (A) *What bail is sufficient.*

**I**N felony no less than two to be bail. *Hal. Pl. Cr. 97. 2 Hal. Hist. Pl. Cr. 125.* In *B. R.* upon a *habeas corpus* on a commitment for treason or felony, four is required. The bail ought to be sufficient to answer the sum in which they are bound, which ought never to be less than (*Hal. Pl. Cr. 97.*) 40*l.* for a capital crime; but may be as much higher as the justices in discretion shall require, considering the ability and quality of the prisoner, and the nature of the offence. And the person who takes the bail may examine them on their oaths concerning their sufficiency. *Harwk. P. C. B. 2. c. 15.*

Excessive bail not to be required. *Stat. 1 W. & M. sess. 2. c. 2.*

(B) *Of*

## (B) Of taking insufficient bail.

**W**Here justices, &c. admit persons to bail for felony, with insufficient sureties, who don't appear according to the recognizance, the justices of assize may fine them. *Hawk. P. C. B. 2. c. 15.*

## (C) Of granting bail where it ought to be denied.

**T**O take bail for a person not bailable is punishable by the common law, as for a negligent escape. *Ibid. Hal. Hist. Pl. Cr. 596, 597. 2 Str. 1216.* And is an offence against *stat. Westm. (i. e. 1 Edw. 1.) 15. 27 E. 3. 1. c. 3. 4 E. 3. c. 2. 1 & 2 Ph. & Mar. c. 13.*

## (D) Denying, delaying, or obstructing bail, where it ought to be granted.

**I**S a misdemeanor, punishable not only by action at the suit of the party wrongfully imprisoned, but also by indictment at the suit of the king. *Hawk. P. C. B. 2. c. 15.*

Any with-holding prisoners bailable, after they have offered sufficient surety, to be amerced. And if he take reward for deliverance, to pay double to the prisoner, and be in the king's mercy. *Stat. de Finibus (i. e. 27 Edw. 3. 1.) c. 3.* See the *habeas corpus* act, under tit. *Habeas Corpus.*

## (E) In what cases bail is grantable.

**S**O far as any persons are judges of a crime, so far they have power of bailing a person indicted before them of such crime. Therefore two justices (*quor' un' J.*) may bail persons indicted before the sessions. *Hawk. P. C. B. 2. c. 15. vid. stat. 3 H. 7. c. 3. 1 & 2 Ph. & Mar. c. 13.*

Justices of gaol-delivery may bail persons convicted before them of homicide by misadventure,  
or

## Bail in Criminal Cases.

or in self-defence, the better to enable them to purchase their pardon, also persons indicted or appealed for any other crime. *Hawk. P. C. B. 2. c. 15.*

Persons outlawed, those that have abjured the realm, approvers, such as are taken with the manner, prison-breakers, thieves openly defamed and known, appellees by provers during the life of such provers, house-burners, counterfeits of the king's seal or coin, excommunicated persons (taken upon the certificate of the bishop), manifest offenders, traitors against the king's person, are not repleviable by common writ, or without writ. But those that are indicted of larceny, by inquests taken before sheriffs or bailiffs by their office, or for some light suspicion, or for petty larceny; accessory to any felony, or accused of trespass, may be let to bail before the sheriff by good sureties; for which the sheriff shall be answerable. *Stat. Westm. (1. e. 3 Edw.) c. 15.*

And sheriffs are not to admit to bail such as are in prison by condemnation, execution, *Cap' utlagat.* Excommunication, surety of the peace, or committed by the special command of any justice, and vagabonds refusing to serve. *Stat. 23 H. 6. c. 10.*

He that has dangerously hurt another may be bailed, till the party be dead, 2 *Hawk. Pl. Cr. 103.* See 2 *Hal. Hist. Pl. Cr. 134.*

All accessories before and after the fact are bailable. Also principals suspected only of burglary and robbery, tho' indicted, persons indicted of petty larceny; and therefore the party accused of any offence below felony must be bailable too, unless ousted by statute, or unless judgment be given. *Wood's Inst. p. 643.*

## Bail-Bonds.

**A** According to *stat. 23 H. 6. c. 10.* A prisoner taken upon a *capias* not to be discharged till bail bond given, unless the plaintiff or his attorney consents

consents to take an appearance without bail; and then the warrant of attorney to appear, to be subscribed or accepted by the defendant's attorney, and such warrant not to be revoked; and an attachment to be granted against the bailiff offending herein, or against the attorney refusing to appear or procure an appearance, having so subscribed or accepted. *Reg. M. 1654. C. B.*

Bail-bond taken in *London* or *Middlesex*, not to be put in suit till after four days exclusive of the appearance day of the return of the process; and when taken in any other city or county, not till 8 days exclusive of the appearance day; on pain of having such proceedings (on motion) set aside with costs. *Reg. H. 9 A. C. B.*

If any be arrested by process out of the courts at *Westminster*, at the suit of a common person, and the sheriff or officer takes bail; the sheriff, &c. at the request and costs of the plaintiff or his attorney, shall assign to the plaintiff the bail-bond, by indorsing the same, and attesting it under his hand and seal in the presence of two witnesses, without stamp, provided the assignment be stamped before the action brought thereon. And if the security be forfeited, the plaintiff after assignment may bring an action thereupon in his own name: And the court may by rule give such relief to the plaintiff and defendant in the original action, and to the bail, upon the security, as is agreeable to justice; and such rules of court shall have the nature of a defeasance to such bail-bond. *Stat. 4 A. c. 16.*

If bail-bond be regularly assigned, and put in suit, the proceeding may be set aside on paying costs, on application before the rule to plead be out, by motion of court, or judge's summons, if the plaintiff be not thereby delayed of trial, or of obtaining judgment against the principal. But before application, the defendant must put in, and justify bail, in the original action, and give notice thereof to the plaintiff's attorney.

In *K. B.* if the same persons who were bail to the sheriff become bail above, and the plaintiff ex-

cepts



## Bankrupts.

cepts to them, he can't take an assignment of the bail-bond, and proceed upon that, because that falsifies his exception and admits them to be sufficient, but it is otherwise in *C. B.*

## Bankrupts.

(A) *Who may be, and what acts make, a bankrupt.*

**I**F any person that has used the trade of merchandize, and sought his living by buying and selling in gross, or by retail, or shall use the trade of a (a) scrivener, receiving other men's money, and does (b) depart the realm, or (c) begins to keep his house, or otherwise (d) absents himself, or suffers himself willingly to be (e) arrested for debt or any other thing not due, for money delivered, wares sold, or good consideration, or will suffer himself to be (f) outlawed, or (g) or yield himself to prison, or (h) depart from his dwelling house, to the intent to defraud or hinder any of his creditors of the just debt of such creditor, he shall be deemed a bankrupt. *Stat. 13 El. c. 7.*

Every

(a) *Dav. 16. See 2 Ld. Raym. 851.*

(b) *Stone 123. Read. Stat. Law 186. Dav. 30. Goodw. 22.*

(c) *Palm. 325. Salk. 110. Lev. 13, 14, 17. 2 Show. Rep. 215, 512. Cas. Temp. Holt 95. Dav. 45, 92. Billing. 92. Goodw. 22. Stone 123. Cro. El. 13. pl. 6.*

(d) *Dav. 91. Goodw. 21. Stone 7. Billing. 95. Gen. Syst. of Bank. Laws 24.*

(e) *Goodw. 23. 7 Vin. Abr. 62.*

(f) *Keb. Rep. 11. 2 Sid. 69, 114, 176. Stone 124. Goodw. 23. Billing. 94. Stone 124.*

(g) *Billing. 95. Goodw. 25.*

(h) *Dav. 96. 2 Str. 809.*

Every person using merchandize, &c. who shall willingly or fraudulently procure his goods, money or chattels, to be (a) attached or sequestred, or (b) depart from his dwelling-house, or (c) make any fraudulent grant or conveyance of his lands or chattels, whereby his creditors may be defeated or delayed for the recovery of their debts, shall be adjudged a bankrupt. *Stat. 1 Jac. c. 15.*

Every person using the trade of merchandize by way of bargaining, exchange, bartering, chevifance, or otherwise in gross, or by retail, or seeking his living by buying and selling, or that shall use the trade or profession of a (d) scrivener, receiving other mens money or estates into his trust or custody, who shall obtain any (e) protection (other than such persons as shall be lawfully protected by privilege of parliament) or shall (f) prefer unto his majesty, or unto any of the king's courts, any petition or bill against his creditors, or any of them, thereby desiring or endeavouring to compel them to accept less than their just and principal debts, or to procure time, or longer days of payment, than was given at the time of their original contracts or being arrested for debt, shall after his arrest lie in prison (g) two months upon that, or any other arrest or detention for debt; or being arrested for 100 *l.* or more, of just debt, shall after such arrest (b) escape out of prison, shall be adjudged a bankrupt; and in case of arrest, or lying in prison for debt, from the time of his first arrest. All acts against

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(a) 7 *Vin. Abr.* 61, 62. *pl.* 15. *Dav.* 97. *Goodw.* 29. *Stone* 124. *Billing.* 94.

(b) *Dav.* 96. 2 *Str.* 809.

(c) *Dav.* 102. *Hut.* 42, 43.

(d) *Dav.* 16. See 2 *Ld. Raym.* 851.

(e) *Stat.* 7 *An. c.* 12 *f.* 5.

(f) *Dav.* 110. *Syst. of Bank. Laws* 36.

(g) *Billing.* 95. *Goodw.* 26. *Salk.* 109, 110.

2 *Show. Rep.* 519. *Dav.* 94. *Syst. of Bank. Laws*

35.

(b) *Syst. of Bank. Laws* 35.

## Bankrupts.

against bankrupts, shall extend to strangers born, as well aliens as denizens, as effectually, as to natural-born subjects, both to make them subject to the laws as bankrupts, as also to make them capable of the benefit as creditors. *Stat. 21 Jac. 1. c. 19. 2 Keb. Rep. 487. Hugh. Abr. 315, 316. Goodw. 17. 2 Wil. Rep. 308.*

No persons who shall adventure any money in the *East-India* company, or *Guinea* company, or any joint stock of money by them raised, for carrying on the trade by the said *East-India* company, or *Guinea* company, to be managed, or who shall adventure any money in any stocks for managing the fishing-trade, or the trade called *The Royal Fishing-Trade*, and shall receive their dividend of fish or merchandize in specie, and shall sell, or exchange the same, shall by reason of such adventure, selling or exchanging be adjudged a merchant or trader, within any statute for bankrupts. Provided that every person who shall trade in any other way, than in the said royal fishing-trade, or the trade managed by the said *East-India* company or the *Guinea* company, shall by reason of his trading and merchandizing be liable to commissions against bankrupts, as fully as if this act had never been made. *Stat. 13 & 14 Car. 2. c. 24.*

Members of the bank of *England* shall not be adjudged liable to the statutes of bankrupts. *Stat. 7 A. c. 7. 7 & 8 W. 3. c. 31. 8 & 9 W. 3. c. 20. f. 47. 5 A. c. 13. 3 G. c. 8.*

Nor members of the *South-Sea* company. *Stat. 9 A. c. 21. 3 G. c. 9. 5 G. c. 19. 6 G. c. 4. 8 G. c. 21. f. 12.*

Bankers, brokers, and factors, are liable to the statutes concerning bankrupts, but no (a) farmer, grazier or drover, or receiver general of the land-tax is liable. *Stat. 5 G. 2. c. 30. f. 40.*

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(a) 8 Mod. 146. Str. 513. Read. Stat. Law 184.

A (b) single act is not enough to make a bankrupt. It is not buying or selling of (c) land, but of personal things, that may make a bankrupt, nor is it the (d) buying only, or (e) selling only, but both buying and selling. Such as live on their manual labour only, as husbandmen, labourers, handicrafts-men, are not trades within the statutes (f). But such as buy wares, and convert them into saleable commodities, and (g) get their livelihood by buying and selling, may be bankrupts within the statutes; as a (b) shoemaker, (i) locksmith, (k) clothier, &c. But not an (l) inn-keeper; for he does not properly sell what he buys; but utters it at such reasonable rates as he thinks fit, with respect to attendance of servants, &c. A feme covert sole merchant may be a bankrupt; so shall her husband upon that account (m).

## (B) Of petitioning for a commission.

**N**O commission to be awarded, unless the single debt of one creditor, or of more persons being partners petitioning, amount to 100*l*.

(b) *Goodw.* 11.

(c) *March. Rep.* 37.

(d) 2 *Keb. Rep.* 487. 3 *Mod.* 328. *March Rep.* 34.

(e) *Sid.* 299.

(f) *Stone* 121. *Cro. Car.* 31. See *Cro. Jac.* 585. 3 *Mod.* 330.

(g) *Goodw.* 11.

(h) *Cro. El.* 268. *Cro. Car.* 31. 3 *Mod.* 330.

(i) *Goodw.* 12.

(k) *Goodw.* 12.

(l) *Cro. Car.* 549. *T. Jones.* 437. *March Rep.* 35. 3 *Lew. Rep.* 309. 3 *Mod.* 327. *Ld. Raym.* 287. *Salk.* 109. 12 *Mod.* 159. But see and note 7 *Vin. Abr.* 57. pl. 15. in notes. *Stone* 119.

(m) *Read. Stat. Law* 186. *Stone* 119. *Dav.* 23, 24. or



## Bankrupts.

or unless the debt of two creditors petitioning amount to 150 *l.* or unless the debt of more creditors petitioning amount to 200 *l.* and the creditors petitioning shall, before the same be granted, make affidavit, or solemn affirmation, before one of the masters of *Chancery*, of the truth of their debts, and give bond to the lord chancellor, in the penalty of 200 *l.* to be conditioned for proving their debts, as well before the commissioners, as upon a trial at law, in case the due issuing forth of the same shall be contested, and also for proving the party a bankrupt, and to proceed on such commission as herein is mentioned, (*vid. form of the bond in the first part*). And if such debts shall not be really due, or if after commission taken out, it cannot be proved that the party was a bankrupt, then the lord chancellor shall, upon petition of the party grieved, order satisfaction to be made for the damages sustained; and, in case there be occasion, assign such bonds to the party, who may sue for the same in his own name. *Stat. 5 G. 2. c. 30. § 23.*

Persons taking bills, notes, or other security for money payable at a future day, may petition for a commission, or join in petitioning. *Ibid. § 22.*

### (C) *Of suing out commission, and the power of the commissioners.*

*Estate.*

THE lord chancellor, upon complaint in writing against a bankrupt, may by commission appoint such persons as to him shall seem good; who, or the majority, may at discretion take such order with the body of such person by imprisonment, as also with his lands, as well copyhold as freehold, which he had in his own right before he became a bankrupt, and also with all such lands as such person has purchased for money, or other recompence, jointly, with his wife or child, to the only use of such offender, or for such use or title as such offender then shall have in the same, which he may depart withal, or with any persons of trust to any secret use of such offender, and also with his money,

money, goods, merchandizes and debts; and cause the said lands, &c. to be appraised to the best value, and by deed indented inrolled to sell the said lands, &c. and of all deeds touching only the same, belonging to such offender, and also of all fees, offices, goods and chattels; or otherwise to order the same for satisfaction of the creditors; to every of the creditors a portion, rate-like, according to their debts; and every direction, and other thing done by the persons so authorised, shall be good against the said offender, his wife, heirs, children, and such persons, as by such joint purchase with the offenders shall have any estate or interest in the premises, and against all other persons claiming by, from, or under such offender, by any acts done after such person shall become bankrupt, and also against the lords of manors, whereof the said copyhold lands are holden. Provided that every person, to whom such sale of copyhold lands shall be made, shall, before they take any profit of the same, agree with the lords of manors for such fines as have been accustomed to be paid: And upon such agreement, the lords at the next court shall grant unto the vendees, upon request, the same lands, by copy of court-roll, reserving the ancient rents, customs and services, and admit them tenants, and receive their fealty. *Stat. 13 El. c. 7. 1 J. c. 15.*

The commissioners, or other persons by them appointed by their warrant, may break open the houses, chambers, shops, warehouses, doors, trunks or chests of the bankrupt, where he or any of his goods or estate shall be reputed to be, and to seize upon, and order the body, goods, money, and other estate as to the commissioners shall be thought meet. *Stat. 21 J. c. 19. § 8.*

The commissioners may examine the bankrupt upon interrogatories touching the lands, goods, debts, books of account, and such other things as may tend to disclose his estate, or secret grants, and eloining of his lands, goods, money and debts, as they think meet. *Stat. 1 J. c. 15. § 7. vid. 5 G. 2. c. 30. § 16.*

2 Show.  
Rep. 247.

*Abatement.* Commission does not abate by the death of the king. *Stat.* 5 G. 2. c. 30. § 45.

Nor of the bankrupt after sued forth, and dealt in, and before distribution. *Stat.* 1 J. c. 15. § 17. See *Cas. Temp. Talb.* 184. *Barnard. K. B.* 315.

*Costs.*

The petitioning creditors shall be obliged to prosecute the commission, until assignees chosen; and the commissioners shall, at the meeting for choosing assignees, ascertain such costs, and by writing shall order the assignees to reimburse such creditors out of the first effects got in; and every creditor may prove his debt without paying contributions. *Stat.* 5 G. 2. c. 30. § 25.

*Fees.*

Bills of fees or disbursements demanded by any solicitor to be settled by one of the masters, who shall have for settling the same, and for his certificate thereof 20 s. *Ibid.* § 46.

*Commission fraudulently sued out.*

If a bankrupt after commission issued, pay the person who sued it out, or deliver him goods or security for his debt, whereby he may have more in the pound than the other creditors, such payments, &c. is an act of bankruptcy, whereby such commission may be superseded, and another awarded; and the person receiving such goods or other satisfaction, forfeits as well his debt, as what he has received, and must pay back and deliver up the same, or the full value thereof to be divided amongst the other creditors. *Stat.* 5 G. 2. c. 30. § 24.

Commissioners not to act till they have respectively taken an oath to this effect.

*Oath of commissioners.*

**I** A. B. do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner in a commission of bankrupt against ———, and that without favour or affection, prejudice or malice.

So help me God.

*Memorial.*

Which any two of the commissioners may administer to each other, and they must keep a memorial thereof signed by them among the proceedings. *Ibid.* § 43, 44.

(D) Of

## (D) Of bankrupt's surrender and submission.

**I**F a bankrupt shall not within 42 days after notice in writing left at his usual place of abode, or personal notice if he be in prison, and notice in the *London Gazette*, surrender himself to the commissioners, and subscribe the surrender, and submit to be examined upon oath or affirmation, and conform to the statutes concerning bankrupts, and on examination discover all his effects, and how he has disposed of his effects (and all books and writings relating thereto) of which he was possessed or interested, or whereby such person has, or may expect, any possibility of advantage (except such part as shall have been *bona fide* disposed of in the way of his trade, and except such money as shall have been laid out in the ordinary expence of his family) and also, deliver up to the commissioners such part of his effects, and all books and writings relating thereto, as shall be in his power (the necessary wearing apparel of himself, his wife and children excepted): Then in default in not surrendring and submitting as aforesaid, or if he conceal or imbezel his estate to the value of 20/. or any books of account, or writings relating thereto, with intent to defraud his creditors (and being convicted by indictment or information) is guilty of felony \* without clergy, and his goods and estate shall go among his creditors. And the commissioners to appoint

*Meetings.*

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\* Three persons have been capitally convicted on this act, viz. Town, a chandler, Alexander Thompson, an embroiderer, in 1756, and John Perrott, a merchant, in 1762.



large the time for such surrender and discovery, not exceeding 50 days, from the end of the said 42 days; so as the order for enlarging the time be made 6 days before the time on which such person was to surrender himself. *Stat. 5 G. 2. c. 30. § 1, 2, 3.*

*Commitment for not conforming.*

Upon certificate of the commissioners, that the commission is issued, and the person proved a bankrupt, the justices of *B. R.* or *C. B.* or barons of *Seacc.* and the justices of peace in *England, Wales,* or *Berwick upon Tweed,* on application, to grant warrants for apprehending such person, and commit him to the common gaol of the county where apprehended, there to remain until he be removed by order of the commissioners; and the gaoler must give notice to one of the commissioners of such person being in his custody, and the commissioners may seize the effects of such bankrupt (the necessary wearing apparel of himself, his wife and children excepted) and his books or writings, which shall be then in the custody of him, or any other person in prison. And if any person so apprehended shall within the time allowed submit to be examined, and conform as if he had surrendered, he shall have the same benefit as if he had voluntarily come in. *Stat. 5 G. 2. c. 30. § 14, 15. 5 Mod. 308. Salk. 348. Comb. 395. Set. & Rem. 236. Carth. 153. Ld. Raym. 99, 100. Sess. Cas. 264. 2 Str. 880. Barnard. K. B. 398. Ventr. 322. 3 Keb. Rep. 837. pl. 74. 2 Ld. Raym. 851.*

*Bankrupt in custody when commission issued.*

If the bankrupt be in custody at the time of issuing the commission, and is willing to submit to be examined, and can be brought before the commissioners and creditors, the expence thereof shall be paid out of the bankrupt's estate: But if he is in execution and can't be brought before the commissioners, then the commissioners shall attend him in custody, and take his discovery; and the assignees are to appoint persons to attend such bankrupt in prison, and to produce his books and writings, in order to prepare his discovery; a copy whereof the assignees shall apply for, and the bankrupt shall deliver

liver to their order 10 days before the last examination. *Stat. 5 G. 2. c. 30. § 6.*

Bankrupt having surrendered may at seasonable times before the expiration of the 42 days, or such further time as shall be allowed to finish his examination, inspect his books and writings in the presence of some person to be appointed by the assignees, and bring with him for his assistance, such persons as he shall think fit, not exceeding two at a time, and make extracts and copies, to enable him to make a full discovery of his effects. *Stat. 5 G. 2. c. 30. § 5. vid. Tit. Arrests.*

*Bankrupt's inspecting books.*

## (E) *Of fraudulent conveyances, &c.*

**I**F a bankrupt upon examination be found to have fraudulently conveyed his goods, lands, or other estate, to the value of 20*l.* to hinder the execution of the statutes, or to defraud creditors, and shall not upon examination discover, and (if in his power) deliver to the commissioners all the estate so conveyed or detained, or that cannot make it appear that he has some casual loss, whereby he is disabled to pay what he owed, may be indicted for such fraud or abuse at the assizes or sessions of peace, and if convicted set in the pillory for two hours, and have one of his ears nailed to the pillory and cut off. *Stat. 21 J. c. 19. § 7.*

## (F) *Allowances to bankrupts on surrendering and conforming.*

**B**ANKRUPTS who surrender and conform, to be allowed 5*l.* *per cent.* out of the neat produce of the estate that shall be received, if the neat produce after such allowance, is sufficient to pay 10*s.* in the pound, and so as the said 5*l.* *per cent.* does not amount to above 200*l.*; and if the neat produce be sufficient to pay 12*s.* 6*d.* in the pound, then to be allowed 7*l.* 10*s.* *per cent.* so as such allowance does not amount to above 250*l.*; and if the neat produce over and above the allowance, be

E 2

sufficient

*Suits for  
debts before  
bankrupt y.*

sufficient to pay 15 s. in the pound, then to be allowed 10 l. *per cent.* so as such 10 l. *per cent.* does not amount to above 300 l. and every such bankrupt to be discharged from all debts owing at the time he became a bankrupt. And if he be impleaded for any debt due before he became a bankrupt, he shall be discharged upon common bail, and may plead in general that the cause of action accrued before he became bankrupt; and the certificate of his conforming, and the allowance thereof, shall be sufficient evidence of the trading, bankruptcy, commission, and other proceedings precedent to the obtaining such certificate; unless the plaintiff can prove the said certificate was obtained unfairly, or make appear any concealment by such bankrupt to the value of 10 l. And if the neat produce does not amount to 10 s. in the pound, he shall only be allowed so much as the assignees and commissioners think fit, not exceeding 3 l. *per cent.* Stat. 5 G. 2. c. 30. § 7, 8. See *Wil. Rep.* 254. 10 *Mod.* 162, 163, 245. *Gilb. Cas.* 323.

(G) *Of choosing assignees, proving debts, and making assignments.*

THE commissioners forthwith after they have declared the person a bankrupt, to cause notice thereof to be given in the *Gazette*, and appoint time and place for the creditors to meet (if for *London*, and within the bills of mortality, to be at *Guildhall*) to choose assignees; at which meeting the commissioners are to admit the proof of any creditor's debt, that lives remote from the place of meeting, by affidavit or affirmation, and permit any person duly authorised by letter of attorney (oath or affirmation being made of the execution of it, before a master in *Chancery*, ordinary or extraordinary; or before the commissioners *vi-va voce*; and in case of creditors residing in foreign parts, affidavit or affirmation to be made before a magistrate, where the party resides, and shall together with his letter of attorney, be attested by a

notary

notary publick) to vote in the choice of assignees in the place of such creditor; and the commissioners are to assign the estate to such persons as the major part in value of such creditors, according to the debts then proved, choose; and the assignees to keep books of account, of all money and effects which they receive out of the estate, to which book the creditors to have free resort. No creditor, or person in his behalf, to vote in the choice of assignees, whose debt does not amount to 10*l.* *Stat.* 5 G. 2. c. 30. § 26, 27.

No schedule of the personal estate to be annexed to the assignment. *Ibid.* § 42.

## (H) Attendance on assignees to settle accounts.

**A**fter certificate obtained and confirmed, bankrupt is obliged on notice in writing to attend the assignees, to settle account of his estate, or to attend any court of record to be examined touching the same, or for such other business, which the assignees judge necessary for getting in his estate; for which attendance he must be allowed 2*s.* 6*d.* *per diem*; and if he neglect to attend, or refuse to assist in discovery, without good cause shewn to and allowed by the commissioners (assignees proving the same on oath or affirmation before the commissioners) the commissioners to issue a warrant for apprehending him, and commit him to the county gaol till he conform, and be by the commissioners, or order of the lord chancellor, or due course of law, discharged. *Stat.* 5 G. 2. c. 30. § 36.

## (I) Of overplus.

**T**HE commissioners, upon request of the bankrupt, are to make declaration of the employing and bestowing of his lands, &c. and to pay the overplus (if any) to the bankrupt, who after full satisfaction of the creditors may recover the residue



of the debts. *Stat. 13 El. c. 7. § 4. 1 J. 1. c. 15. § 2.*

(K) *Where certificate is to be allowed.*

**N**O discovery intitles the bankrupt to the benefits of this act, unless the major part of the commissioners certify to the lord chancellor, that he has made a full discovery, and in all things conformed himself, and that there is no doubt of the truth of such discovery, and unless four parts in five in number and value of the creditors, who must be creditors for not less than 20*l.* respectively, or some other person by them duly authorized, sign such certificate; but the commissioners are not to certify till they have proof by affidavit or affirmation in writing of such creditors, or of the persons by them authorized, signing the certificate, and of the power by which any person is authorized to sign for any creditor (which affidavit or affirmation, together with such authority to sign, shall be laid before the lord chancellor with the said certificate) and unless such bankrupt make oath, or affirm in writing, that such certificate was obtained without fraud; and unless such certificate be allowed by the lord chancellor, or by such two of the justices of *B. R. C. B.* or barons of the Exchequer, to whom the consideration of such certificate is referred by the lord chancellor; and any of the creditors are to be heard, if they think fit, against the making the certificate, and against the confirmation thereof. *Stat. 5 G. 2. c. 30. § 10.*

(L) *Of suits after bankrupt discharged.*

**I**F bankrupt, who has obtained his certificate, be taken in execution or imprisoned on account of any debts owing before he became a bankrupt, by reason that judgment was obtained before certificate allowed, a judge of the court wherein judgment was obtained, on the bankrupt's producing the certificate allowed, may order any sheriff or gaoler to discharge

discharge him without fee. *Stat. 5 G. 2. c. 30. § 13.*

But the discharge of a bankrupt from debts owing by him when he became a bankrupt, shall not discharge him who was his partner in trade, or stood jointly bound, or had made any joint contract with such bankrupt. *Stat. 10 A. c. 15. § 3.*

No person, who is *bonâ fide* a creditor of any bankrupt, for or in respect of goods *bonâ fide* sold to such bankrupt, or of any bill of exchange *bonâ fide* drawn, negotiated, or accepted by such bankrupt, in the usual ordinary course of trade, shall be liable to repay to the assignee, any money which before the suing forth of the commission of bankruptcy was *bonâ fide*, and in the usual course of trade, received by such person of such bankrupt, before the person receiving the same shall have notice that he is become bankrupt, or is in insolvent circumstances. *Stat. 19 G. 2. c. 32.*

The obligee in any bottomree or *respondentia* bond, and the assured in any policy of insurance made and entered into, upon a valuable consideration *bonâ fide*, shall be admitted to claim, and after loss to prove his debt, as if the loss had happened before the date of the commission, against the obligor or insurer, and the bankrupt shall be discharged from such bond and policy, and have the benefit of the several statutes against bankrupts, as if the loss had happened, or the money had become payable, before the date of the commission. *Same statute.* See the *stat. 19 G. 2. c. 32. 24 G. 2. c. 57. 31 G. 2. c. 35. J. 3.*

## Bar.

### (A) *In general.*

**I**F defendant have no advantage of abatement, or demurring in law, he must plead in bar of the action.

Pleas in bar are either general, which require no replication, (*vid. General Issue*) or special, as

(1.) A general release. (2.) A defeazance. (3.) An acquittance; or acceptance of any other thing, &c. (4.) Tender of amends. (5.) Concord, or arbitrament. (6.) A former judgment, or recovery. (7.) Statute of limitations. (8.) Disability of the plaintiff, as that he is outlawed, attainted, an alien, a bastard. (9.) Privilege of defendant, &c. *Vid. sic. Abatement.*

(B) *In slander.*

(1) **S**tatute of limitations. (2.) Defendant excuses himself of other words, and traverses the words in the declaration. (3.) Justification of words spoken of a sheriff. (4.) Justification of exhibiting a petition to the justices of the peace. (5.) To the committee for grievances. (6.) Justification for that the plaintiff murdered his wife. (7.) For that the plaintiff killed a man by unwholesome medicines. (8.) For charging a man with felony. (9.) For that the plaintiff stole his sheep. (10.) For that the cup was found upon the plaintiff. (11.) For that the plaintiff had stolen a horse *cujusdam ignoti*. (12.) For that burglary was committed. (13.) Justification of the words, because the common voice of the country. (14.) For that the plaintiff sold wares by false weight. (15.) That the plaintiff owed him the money demanded, &c. (16.) That the plaintiff forswore himself. (17.) To slander of title. *Vid. 3 Instr. Cler. 270.*

(C) *In assumpsit.*

(1.) **T**O the first promise *non assumpsit*, and to the 2d, That the plaintiff by agreement delivered the goods in the name of a third person to the defendant for satisfaction of money to him due by the third person. (2.) That the defendant paid part, and would have paid the residue if the plaintiff would have delivered cattle according to agreement. (3.) For that the meat, &c. found for the defendant's wife at such a day, defendant

dant *non assumpsit*, and afterwards the wife absented against the will of the defendant, of which he gave notice. (4.) A letter of licence. (5.) For that the testator accounted with defendant in his life time, and defendant thereupon was found in arrear in 12*l.* and afterwards paid 10*l.* and the other 40*s.* he offered to pay the executrix. *Vid.* 3 *Instr. Cler.* 339. and tit. *Case post.*

(D) *In trover.*

(1.) **T**HAT the goods were bought in open market, &c. (2.) That defendant took the horse as an estray and proclaimed it, and put the same to pasture, and because the plaintiff will not pay him for the pasture, he detains it, &c. *Vid.* 3 *Instr. Cler.* 360. But in fact, all these amount to the general issue, and there seem to be no other pleas in trover, but the general issue and a release.

(E) *In disturbance.*

(1.) **O**F burial. (2.) Of a seat of a church. (3.) Of a way. (4.) Of the sheriff in his execution. (5.) In office. (6.) In a common, &c. *Vid.* 3 *Instr. Cler.* 386.

(F) *For negligences.*

(1.) **I**N keeping fire. (2.) Of an innkeeper, &c. (3.) Of a carrier. (4.) Of a surgeon, &c. *Vid.* 3 *Instr. Cler.* 410. and tit. *Case post.*

(G) *In rescue and escape.*

**V** I D. 3 *Instr. Cler.* 427.

(H) *In malefeasance, misfeasance, &c.*

**B**Y an attorney, that he was retained, &c. *Vid.* *Instr. Cler.* 443.



## Bargain and Sale.

(I) *In nufance.*VID. *Ibid.* 452.(K) *In covenant.*VID. *Ibid.* 461.

## Bargain and Sale.

*Of inrol-  
ling it.*

**L**Ands or hereditaments shall not pass, whereby any estate of inheritance of freehold shall be made, or any use thereof, by reason only of any bargain and sale, unless the bargain and sale be made by writing indented and inrolled in one of the king's courts of record at *Westminster*, or within the county where the lands lie, or before the *custos rotulorum* and two justices of the peace, and the clerk of the peace of the county, or two of them, whereof the clerk of the peace to be one; the same inrollment to be made within six months after the date of the writings; the *custos rotulorum*, or justices of peace and clerk, taking for the inrollment where the lands exceed not the yearly value of 40*s.* 2*s.* viz. 12*d.* to the justices, and 12*d.* to the clerk; and for the inrollment wherein the land exceeds 40*s.* in yearly value, 5*s.* And the clerk of the peace shall inroll the deeds, and the rolls thereof, at the end of every year, shall deliver unto the *custos rotulorum*, to remain in his custody amongst other records of the counties. This act shall not extend to lands within any city, borough or town corporate, wherein the mayors, recorders or other officers have authority to inroll deeds. *Stat. 27 H. 8. c. 16.*

*In Lanca-  
shire, Che-  
shire, and  
Durham.*

Such bargains and sales of lands or hereditaments in *Lancashire*, inrolled within six months after date in the Chancery at *Lancaster*, or justice of assize at *Lancaster*, or in *Cheeshire*, in the Exchequer at *Chester*, or justice of assize at *Chester*, or in *Durham*,

## Bargain and Sale.

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*ham*, in the chancery, or before the justices of assize there, shall be as good as if inrolled in the courts at *Westminster*. But this act does not extend to any lands within any city or town corporate, wherein the mayors or other officers have authority to inroll deeds. *Stat. 5 El. c. 26.*

Where in any declaration, avowry, bar, or other pleading, any indenture of bargain and sale inrolled shall be pleaded with a *profert in cur.* the person so pleading may produce, to answer such *profert* against the king or other person, a copy of the inrolment examined and signed by the proper officer, and proved on oath to be a true copy, shall be of the same force as the indentures of bargain and sale. *Stat. 10 A. c. 18.*

No contract for the sale of goods, for the price of 10*l.* or upwards, shall be good, unless the buyer accept part of the goods, or give something in earnest to bind the bargain, or that some note in writing of the bargain be made and signed by the parties to be charged by such contract, or by their agents lawfully authorised. *Stat. 29 C. 2. c. 3. § 1.*

*Of pleading deeds. Stat. 8 G. 2. c. 6. § 21. Gilb. Evid. 24.*

*Contract for sale of goods. See Bac. Abr. 73. Gilb. Hist. Chanc. 237.*

## Baron and Feme.

1. *A Husband and wife are accounted but one person in law*, therefore a man cannot grant lands, &c. to his wife during the coverture, nor any estate or inheritance to her, nor enter into covenant with her. But he may by his deed covenant with others for her use, &c. and he may give to her by devise or will; because the devise or will does not take effect till after the death of the devisor or testator. Yet if a *feme covert* is seised of lands in fee, she cannot devise them to her husband, because at the time of making her will she had no power to dispose of them; and she being under the power of her husband, the law will intend it to be done by coercion. They cannot be witnesses for or against each other, except against each other in high treason, or upon the *stat. 3 H.*

*Effects of marriage.*

7. c. 2. where she may be evidence against her husband for forcibly taking her away and marrying her.

2. *The husband has power over the wife's person*, for she is disabled to contract with any person without his consent precedent or subsequent, express or presumed; for tho' the wife is not excluded from using the goods of her husband, (it is not felony if she takes them away) yet she may not dispose of them, nor pawn them. If the wife play and lose her husband's money, the husband may recover it. But if she win at play, and give trust for the money won by her, the husband may recover the debt. She cannot bind her husband in strictness for necessities by any contract, unless a precedent or subsequent assent is proved or presumed: But usually her contracts are allowed, if she buys goods for herself, children, or family; as bread, &c. or for her own necessary apparel. If goods come to the husband's use, it is evidence to prove his assent; but not binding evidence, for it may be contradicted by other proof, as, that he gave his wife ready money: Admitting then that the husband should be charged in strictness for necessities, tho' he knows nothing of them; yet if he forbid particular persons to trust his wife, he shall not be charged by them after such prohibition. As to a prohibition in general not to trust a wife, as by putting her in the *Gazette*, &c. it cannot amount to a legal notice. If the husband allows the wife a stipend for cloaths, &c. and it is constantly paid, he shall not be charged. The necessities bought without the husband's consent must not only be according to the degree of the husband, but of his estate too, or they must be necessities generally. The husband is not chargeable for necessities, as wearing apparel, diet, lodging, &c. according to his estate and degree, upon an elopement. 2 *Stra.* 875. A husband shall not be bound with the wife's receipt of his money. If he threaten to beat or kill his wife, she may make him find security

rity for the peace. *Sra.* 478. *8 Mod.* 22. *Bat. Abr.* 286. (C).

3. *The husband has power over the wife's estate by marriage.* Generally agreements before marriage are extinguished by the marriage; wherefore it is usual for the husband to covenant with others for the use of his wife, as for her jointure, &c. But when there are no such agreements or settlements before marriage, the husband gains by the marriage a freehold in right of the wife if she is seised of one. And he may make a lease of 21 years, or 3 lives of her estate, and it shall be good against the wife, if it is made according to the *stat.* 32 *H* 8. c. 28. The husband also gains a chattel real, to dispose of, if he pleases, by grant or lease in her life-time, or by surviving her. Otherwise it remains with the wife; for the husband can make no disposition thereof by his last will, if he does not survive his wife. If he grants away only part of the term, the wife shall have the reversion; but if he grants the whole term of his wife upon condition, &c. and the condition is broken, the wife is barred; for the whole interest is passed away. Where he may dispose of his wife's term he may forfeit it. Upon execution for the husband's debt the sheriff may sell the term during the life of the wife. Where the wife is out of possession during the coverture, or hath only a possibility, or is possessed of a chattel real as executrix, the husband cannot have it, tho' he survive her. And the husband by the marriage has an absolute gift of all chattels personal in possession of the wife in her own right; whether the husband survive her or no. But if these chattels personal are *choses* in action, he shall not have them, unless he and his wife recover them. Personal goods which the wife has as executrix, &c. are not given to the husband by the marriage tho' he survive his wife; but they shall go to the *administrator de bonis non*, &c.

4. *The wife can't bring an action without her husband for a wrong done to her, or for recovery of*



## Baron and Feme.

of her estate; except when he is banished, (a woman living in *England* as sole, may not give in evidence against her creditors, that she has a husband beyond sea). But by the custom of *London*, a *feme covert* shall sue and be sued, if she is a sole merchant or trader, and where the husband does not intermeddle; and if the action is laid in the city, the husband shall be named for conformity; but if judgment be given, execution shall be only against the wife. So the wife can't be sued without the husband. And therefore in actions for slander, trespass, &c. of the wife, the husband must be made defendant with her, and execution awarded against him. The husband and wife must be sued for her debt before her marriage, living the wife, but he shall not be charged for such debt after her death, if her creditors don't get judgment during the coverture. A woman for her own offence may be indicted without her husband, and she only shall be party to the judgment, and fined; and committed till it is paid. If she steal by the compulsion of her husband, or with him, it is not felony in her, but this does not extend to treason or murder. And she may sue and be sued in court christian without her husband.

5. *After marriage is dissolved several rights accrue to the survivor.* As if husband seized in fee, or for life in right of his wife, sows the land, and she dies before severance, he shall have the corn; or if he dies before his wife, his executors shall have it. The term of the wife, or a lease for years of the wife, are a gift in law to him if he survives her; and so it is of other chattels real in possession; but if a woman grants a term to her own use, and takes a husband and dies, he surviving shan't have this trust; but her executors or administrators. The husband to have all chattels real of a *mixed* nature (partly in possession and partly in action). But of things merely in action, he can claim them only as administrator to his wife if he survive. (See *Of state by curtesy of England post*). 2. The wife after her husband's death

death to be endowed of the third part of her husband's lands and tenements in fee, &c. (*vid.* Dower *post.*) Also she may claim her *paraphernalia* or necessary apparel for her body, and cloth to make a garment, &c. according to her degree, besides her dower or jointure, if there are assets to pay debts and legacies, provided he does not give these away by will. If she survive her husband she shall have her term for years again, if he has not altered the property, nor disposed of it in his lifetime; and so it is of other chattels real in possession. And if the husband charge the chattel real of his wife with a rent, &c. it shall not bind her, if she survive him; chattels real of a mixed nature will come to the wife again if she survive. Arrears of rent of any kind, due before or after marriage, remain with the wife. Chattels real or personal in *auter droit* as executrix or administratrix, she may retain; and so *choses in action* remain to her, if not recovered during the marriage. If a lease for years, statute, obligation, &c. is made to *baron & feme*, she shall have it by survivorship if she will. But if personal goods are given to them both, she can't have them by survivorship. *Wood's Inst.* 63.

If on an action against a man and his wife, the wife only be arrested, she shall be discharged upon common bail, or a common appearance. If both are taken in execution, and the husband escape, unless the plaintiff retake the husband, the court will discharge the wife, for the escape of the husband is the escape of the wife. *Salk.* 115. *Vent.* 51.

# Bastards and Bastardy.

**T**WO justices of peace (*quor' un'*) in or next the limits where the parish church is, within which parish a bastard is born, upon examination shall at discretion take order, as well for the punishment of the mother and reputed father, as also for the better relief of such parish in part or in all, and take order for the keeping it, by charging the mother or reputed father with the payment of money

Parents  
how  
charge-  
able.

## Bastards and Bastardy.

money weekly, or other sustentation as they shall think meet. And if the mother or father upon notice of such order do not perform it, to be committed to the common gaol without bail, except they give surety to perform the order, or else personally to appear at the next general sessions of the peace to be holden in that county, where such order is taken, and also to abide to such order as the justices then and there shall take in that behalf; and if at the sessions the justices shall take no other order, then to perform the order before made. *Stat. 18 Eliz. c. 3. § 2.*

All justices of peace, within their limits and in their sessions, may do all things concerning that part of the *stat. 18 El. c. 3.* that by justices in the counties are limited to be done. *Stat. 3 C. 1. c. 4. § 15.*

*And their  
estates.  
2 Ld.  
Raym.  
858.*

The churchwardens and overseers of the parish where a bastard is born, may seize so much of the goods, and of the annual rents or profits of the lands, of the putative father or lewd mother, as shall be ordered by two justices towards the discharge of the parish, to be confirmed at the sessions, for the providing for the child; and the sessions may make an order for the churchwardens or overseers to dispose of the goods, as the court shall think fit. *Stat. 13 & 14 C. 2. c. 12. § 19.*

*Where fa-  
ther com-  
mitted.*

If a single woman be delivered of a bastard likely to become chargeable, or declares herself with child, and that such child is likely to be born a bastard, and to be chargeable to any parish, and shall in an examination, to be taken in writing upon oath before one justice of peace, charge any person with having gotten her with child; such justice, upon application by the overseers of the poor of such parish, or by any substantial householder of an extraparochial place, may issue his warrant for apprehending and bringing the person so charged, before any justice of such county, &c. who is required to commit him to the common gaol or house of correction, unless he give security to indemnify such parish, or enter into a recognizance with

with sufficient surety, to appear at the next quarter sessions, and to perform such order as shall be made in pursuance of the act 18 *El. c. 3.* And if the woman dies, or be married before she be delivered, or miscarries, or appears not to be with child, he shall be discharged from his recognizance, or released out of custody. And upon application by any person so committed, to any justice, such justice is required to summon the overseers to shew cause why such person should not be discharged; and if no order be made within 6 weeks after the woman is delivered, such justice shall discharge him. And no justice may send for any woman till a month after her delivery, to be examined concerning her pregnancy; nor \* compel any woman, before she be delivered, to answer any questions relating to her pregnancy. *Stat. 6 G. 2. c. 31.*

*Where discharged.*

*When the mother to be examined.*

The justices to commit every woman which shall have a bastard, which may be chargeable to the parish, to the house of correction, to be punished and set to work during one year. And if she offend again, then to remain until she give sureties for her good behaviour not to offend again. *Stat. 7 Jac. c. 4. § 7.*

*When committed.*

If a woman delivered of a bastard, endeavour privately, either by drowning, or secret burying thereof, or any other way, to conceal the death, so that it may not come to light whether it was born alive or not; the mother shall suffer death as in case of murder, except such mother can prove by one witness that the child was born dead. *Stat. 271.*

*Of concealing bastards.*

*Kel. 33.*

*Gilb.*

*Evid.*

21 *Ja. c. 27. § 2.*

*Hale's Pl.*

*Cr. 125.*

2 *H. H. Pl. Cr. 288, 289.* 2 *Hawk. Pl. Cr. 438.* *Law of Evid. 274. pl. 41.*

## Bills

\* 2 *Ld. Raym. 1368. Stra. 612. See 1 vol. p. 115.*



## Bills of Exchange.

*Of protesting them.*

**A**LL bills of exchange drawn in, or dated from, any place in *England*, &c. of 5 *l.* or upwards, upon any person in *London*, or any other place (in which bills the value is expressed to be received) drawn payable at a certain number of days, &c. after the date thereof, may, after acceptance (which shall be by under-writing under the party's hand, and the expiration of 3 days after the same is due, be protested by a notary publick, or in default of him, by any other substantial person of the place, before two witnesses; refusal or neglect being first made of due payment. Which protest must be notified within 14 days after to the party from whom the bills were received, who (upon producing such protest) is to repay the said bill with interest and charges from the protesting; for which protest there shall not be paid above 6 *d.* and in default of such protest, or due notice within the days limited, the person so failing is liable to all costs, damages and interest. *Stat. 9 & 10 W. 3. c. 17. § 1, 2.*

If the party on whom an inland bill of exchange is drawn, refuses to accept the same, the person to whom payable shall cause such bill to be protested for non-acceptance, as in case of foreign bills, for which protest shall be paid 2 *s.* and no more. But no acceptance of such bill shall charge any person unless under-written or indorsed; and if not so under-written or indorsed, no drawer to pay costs, damages, or interest, unless protest be made for non-acceptance, and within 14 days after protest the same be sent, or notice thereof given, to the party from whom such bill was received, or left in writing at his usual place of abode. And if such bill be accepted, and not paid within 3 days after due, no drawer shall pay costs, damages, or interest thereon, unless protest be made and sent, or notice given as aforesaid; nevertheless, the drawer shall be liable to pay costs, damages and interest, if any one protest be made for non acceptance

tance or non payment, and notice be sent, given, or left. No such protest shall be necessary for non-payment, unless the value be expressed in the bill to be received, and unless the bill be drawn for 20*l.* or upwards, and the protest shall be made for non-acceptance, by persons appointed, by 9 *W. 3. c. 17. (ante)*. And if any person accept such bill in satisfaction of any former debt, the same shall be esteemed a full payment, if he does not his endeavour to get the same accepted and paid, and make his protest for non-acceptance or non-payment. But nothing herein discharges any remedy, against the drawer, acceptor, or indorser of such bill. *Stat. 3 & 4 A. c. 9. § 4, 5, 6, 7, 8.*

*Of accept-  
ing bill for  
former  
debt.*

If inland bills be lost, or miscarry, within the time limited for payment, the drawer shall give other bills of the same tenor, security being given (if demanded) to indemnify him if the bills lost or miscarried, be found again. *Stat. 8 & 9 W. 3. Rep. 301. c. 17.*

*Bills lost or  
miscarried.  
Fin.  
Chanc.*

*Pray pay to A. B. 1945*l.* upon demand, out of the money in your hands belonging to the proprietors of the Devonshire mines, being part of the purchase-money of the manor of W. This is no bill of exchange (a). A bill on the agent of a regiment, Pray pay out of my growing subsistence, &c. is no bill of exchange (b). To pay to A. B. or order 10*l.* out of the fifth payment, when it shall become due, is no bill of exchange (c). I promise to pay J. S. 10*l.* or render the body of J. N. to prison before such a day, no negotiable note (d). Bill 25 May 1724, to pay one month after date to A. or order, 9*l.* 10*s.**  
as

(a) 8 *Mod.* 265. *Str.* 591. 2 *Ld. Raym.* 1361. See 1482.

(b) 10 *Mod.* 294, 316. *Fortesc. Rep.* 281. See 2 *R. Raym.* 1362, 1481, 1482. *Str.* 24, 219. 2 *Str.* 762.

(c) 2 *R. Raym.* 1563.

(d) *Gilb Cas.* 93. 2 *R. Raym.* 1362. See 1396. 8 *Mod.* 362.

## Bills of Exchange.

as his quarter half pay from the 24th of June 1724, to the 25th of Sept. following, by advance. Accepted on the 5th of June 1724, is a good bill of exchange (a). 2 R. Raym. 1481. Deliver such a sum, makes a good bill of exchange (b). I promise to be a countable to J. S. or order for 100 l. value received, is a good promissory note (c). I promise to pay to A. 10 l. value received of premises in Rosemary-Lane, late in the possession of T. R. is a good note. 2 R. Raym. 1545.

Parker, C. J. and Eyre J. It is not necessary to insert value received in a bill of exchange (d). Eyre J. It is not necessary to have three persons to a bill of exchange; for a man may draw a bill on himself. Bill to pay 28 l. at 7 l. a month by monthly payments, the first payment to begin in September following, out of growing subsistence. No bill of exchange. Fortescue 281. 10 Mod. 294.

If a goldsmith's note be payable to J. S. or bearer, the bearer cannot bring an action for it in his own name against the drawer, but he may in the name of J. S. And if J. S. indorses the bill, an action lies against him. If a custom be alledged for the bearer to have an action against the drawer, and the defendant demurs to the declaration, judgment will be against him, because the demurrer is a confession of the custom. R. Raym. 180. Salk. 125. Skin. 346. Comb. 204. 12 Mod. 36. 3 Lev. 299.

Holt C. J. If A. having a bill payable to him or bearer, delivers it over for money received, without indorsement, it is a plain sale of the bill and A. does not become a new security; aliter if he had indorsed it. R. Raym. 442. 12 Mod. 241. Com. 57. Sel. Cas. of Evid. 3.

Holt

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(a) 2 Str. 762. Barnard. K. B. 12.

(b) Salk. 130.

(c) 2 R. Raym. 1396, 1399. 2 Str. 629. 8 Mod. 362, 363, 364. See Str. 706.

(d) Fortesc. Rep. 282. Barnard. K. B. 88. Show. Rep. 5.

## Bills of Exchange.

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*Holt C. J.* Though a bill payable to *J. S.* or bearer, be not indorseable, yet if it be indorsed, the indorser shall be charged; for every indorsement is a new contract. *Skin. 410. Salk. 132. Holt 116.*

A fourth indorsee *protests* the bill for non-payment by the acceptor, and then brought an action, and well, against the first indorsee, and recovered. Then the first indorsee brought an action against the acceptor; and though he produced the bill and *protest*, yet because he could not produce a receipt for the money paid by him to the fourth indorsee, as the custom was proved to be amongst merchants, he was nonsuited. *Simble per Holt*, if he had proved payment, it had been sufficient. *R. Raym. 744.*

If the drawee of a bill of exchange absconds before the day of payment, the payee may *protest* it to have better security for the payment, and to give notice to the drawer of the absconding of the drawee, and after the time of payment incurred, then it ought to be *protested* for non-payment the same day of payment, or after it. But no *protest* for non payment can be made before the day of payment. *R. Raym. 743.* Three days are allowed for payment of foreign bills, and if not paid on the last day, the party ought immediately to *protest* the bill and return it, and thereby the drawer will be chargeable; but if not *protested* the last of the three days, there though the drawee fails, the drawer shall not be chargeable. If the last day be a *Sunday* or holiday, the demand of payment and *protest* ought to be on the second day. No custom for the *protest* of inland bills, nor any certain time allowed by the custom for payment of them, therefore to be demanded in a reasonable time after payable, and then if not paid, the drawer shall be charged. *Vide statutes supra.* If the indorsee accepts but two pence of the acceptor, he can't afterwards resort to the drawer. Goldsmiths notes whether payable to order or bearer, are accounted amongst merchants as ready cash, and not as bills  
of



## Bills of Exchange.

of exchange. But a goldsmith's note indorsed, is a bill of exchange against the indorfor. *R. Raym.* 743.

In inland as well as foreign bills of exchange, the drawer must have notice of non payment; for if he received prejudice by the plaintiff's delay, the plaintiff shall not recover. In a foreign bill a *protest* is necessary by the custom; in an inland bill only by the statute, which does not destroy the action where there is no *protest*, but seems only to take from the plaintiff his interest or damages where no *protest*, or to give the drawer a remedy by action for the costs or damages. 2 *R. Raym.* 992. 6 *Mod.* 80. 3 *Salk.* 69.

*A.* signed a note payable to the defendant or order, who indorsed it to the plaintiff. *Holt C. J.* the plaintiff ought to prove a demand, or endeavour to demand the money of *A.* before he can sue the indorfor the defendant. The same law if the bill was drawn on any other payable to the defendant or order, and the demand must be after the indorsement. If the indorsee does not demand the money payable by the bill, of the person on whom it is drawn, in convenient time, and afterwards he fails, the indorfor is not liable. *R. Raym.* 443. 12 *Mod.* 244. *Holt* 117.

Payment of a goldsmith's note must be demanded immediately, or he who delivered it will not be answerable. *R. Raym.* 743. But if demanded in a reasonable time, it is sufficient. 7 *Mod.* 139. 2 *R. Raym.* 928.

The defendant about 11 o'clock indorsed a goldsmith's note to the plaintiff; the drawer continued solvent all that day, and paid some other bills to the plaintiff, but about two o'clock the next morning went off. *Holt C. J.* If the non-payment by the drawer was through the default of the indorsee, in not demanding payment in convenient time, the indorfor is discharged; whether this was a convenient time was left to the jury, who found for the plaintiff. *Skin.* 410. *Salk.* 132. *Holt* 116.

The

## Bills of Exchange.

95

The defendant had subscribed a bill for 46 *l.* payable to *B.* or order, who indorsed 43 *l.* of it, payable to the plaintiff; this was held to be ill, for such a personal contract cannot be apportioned; but if the plaintiff had acknowledged the receipt of 3 *l.* the declaration had been good. *R. Raym.* 360. *Salk.* 65. *Cartb.* 466. 12 *Mod.* 217.

An indorsement, tho' upon discount, will subject the indorser to an action, because it is a conditional warranty and new contract, in case the drawee doth not pay. If *A.* indorses a bill blank to *B.* he puts it in the power of *B.* to over-write what he pleases. In an action against the indorser, it is not necessary to prove the hand of the drawer; for though it be forged, the indorser is liable. *R. Raym.* 443. 12 *Mod.* 244. *Holt* 117.

*Holt C. J.* Taking a bill for goods sold at the same time is payment, because part of the original contract; but if for a precedent debt, it is only conditionally, that the money be paid in convenient time. 2 *R. Raym.* 930. Salk. 124;  
12 *Mod.* 203.

If there be two joint traders, and one of them accepts a bill for himself and partner, it binds both if it concerns the trade; *aliter* if it concerns the acceptor only in a distinct interest. *Salk.* 126. *R. Raym.* 175. Salk. 126.  
*Mol. B.* 2.  
c. 10. f. 29.

Declaration that the defendant *J.* for himself and the other defendant *B.* his partner, made his promissory note, and subscribed it with his own hand, and for himself and the said *B.* promised to pay, &c. good, without saying that he signed it for himself and the other defendant his partner. 2 *R. Raym.* 1484.

Declaration that the defendant and one *A. B.* made their note, and thereby jointly or severally promised, &c. bad; it does not import that they severally promised; it should have been jointly and severally. 2 *R. Raym.* 1535, 1544. *Str.* 76. 2 *Str.* 812.

Bringing

## Bringing in the Body.

K. B.

**S**heriffs or under sheriffs, on being served with a rule peremptorily to bring in the body of the defendant, within 6 days after notice to do it, or be liable to an attachment without a further rule, as heretofore. *Reg. M. 6 G. 2.*

C. B.

**R**ules for the sheriff to bring in the body of a prisoner taken upon a process issuing out of a philazer's office, to be given by such philazer. *Reg. T. 2 W. & M.*

## Case.

(A) *For doing of wrong to the damage of another, touching a thing hereditary, who shall have it.*

*Baron and  
feme.*

**B**ARON and Feme jointly upon an *assumpsit* to the wife *dum sola fuit*. *Hill. 9 Jac. B. R.*

Husband had an action sole upon the *assumpsit* to the wife, and counted of the *assumpsit* of him. *27 Hen. 8. 24 & 25.*

*Commoner.*

Commoner for feeding his common, though he be but a copyholder. *9 Rep. 112. B.*

But then it shall be such feeding by which he loseth his common, or else cannot have it in that beneficial manner as he ought. *9 Rep. 231. a.*

*Executor.*

Executor for putting him out of his term by the lessor. *Nat. Br. 92. g. Regist. 97. 4 Rep. 95. a.*

Upon an *assumpsit* to the testator, to marry one or pay 20*l.* *Lib. Intra. 10. b. sect. 5.*

Upon an *assumpsit* to save the testator harmless of an obligation. *Lib. Intra. 12. b. sect. 2.*

*Feoffee.*

The feoffee, if a nuisance be made, and a feoffment is made, if this continues as a nuisance. *5 Rep. 101. a.*

*Heir.*

The heir for a nuisance made in the time of his father, if it be continued, &c. *5 Rep. 101. a.*

Two

Two cannot join for calling them false knave and Joinder.  
thief. 28 Hen. 8. Dyer 19. Pl. 112.

Two cannot sue in the admiralty where one of  
them ought to have an action at law. 5 Mariae.  
Dyer 137. Pl. 39.

Lessor shall have it against tenant at will for vo- Lessor.  
luntary waste. Litt. 15. a. 14 Hen. 8. 12. 5 Rep.  
13. b. 48 Ed. 3. 25. Dyer 121. Pl. 17. 11 Hen.  
6. 38.

But not for negligent or permissive waste. 5 Rep.  
13 b.

Tenant in common shall have it against the Tenant in  
other, for breaking a gutter between their houses. common.  
2 Hen. 5. 3. pl. 12.

For making a lime pit in his land, which they  
have in common, by which the water surrounds  
his house. 13 Hen. 7. 26.

Tenants in common may join in an action for a  
nuisance upon their land committed, because this  
concerns all their profit. Mich. 7 Jac. Ban. Reg.  
Stone against Dromage.

For taking of a meer-stone, 1 Hen. 5. 1. Lib.  
Intra. 9. & s. 1. for the land may thereby be  
endangered to be lost.

### (B) Against whom it lies.

Against an administrator upon an assumpsit of Admini-  
the testator. Lib. Intra. 4. & s. 3. strator.

Him who cuts trees without cause. 18 Ed. 4. 27.

A bailly of a bailly of goods. 12 Ed. 4. 13.

Against baron & feme, for not repairing sea- Bailly.  
banks upon the land of his wife. 7 Hen. 4. 31. Baron &  
feme.

Trover and conversion lies against baron & feme  
for the conversion of the feme. Mich. 7 Jac. Ban.  
Reg.

Trover and conversion lies not against a carrier Carrier.  
for a delivery to his servant, but an action upon  
the case. Pasch. 9 Jac. Ban. Reg. Wormhall &  
Bradshaw.



- Counsellor.* A counsellor who is retained to purchase land, and discloses the secrets, by which the party is damnified, &c. 11 Hen. 6. 18.
- Churchwardens.* Against churchwardens for not repairing a gutter of the church which is a nuisance to my house, *Lib. Intra. 10. d. sect. 1.*
- Joinder.* Divers do make an *assumpsit*, action lies not against two only of them; but if the plaintiff shews that the others are dead, then it is good, and it is sufficient to shew, that at the request of them that are alive, and the others, the thing was done, and that the others are now dead. *Trin. 7 Jac. B. R.*
- Master.* Against a master upon a sale and warranty of the servant. 11 *Edw. 4. 6.*
- Tenant at will.* Against tenant at will for voluntary waste. *Litt. 15. a. 14 Hen. 8. 12. 5 Rep. 13. Dyer 121. pl. 17.* But not for permissive or negligent waste. *5 Rep. 13. b.*
- Tenant per elegit.* Against tenant *per elegit*, which holds over, and cuts the trees after money tendered to him. 21 *Edw. 3. 16.*
- Tenant in common.* Tenant in common of a house by his companion for breaking his gutter between their houses, 2 *Hen. 5. pl. 12.*
- Kiln.* For making a lime pit to burn lime, by which his house is damnified. 13 *Hen. 7. 26.*
- Tenant for years.* A. having an antient light, B. erects a house which stops it, and leases it to C. yet an action lies not against C. because the lessee had done no wrong, and he could not pull it down. *Trin. 13 Jac. B. R. Quar.* as the law is now taken, whether it lies against B.? It does. 1 *R. Raym. 713. Salk. 460. Carth. 454.*
- Vicar.* When a man prescribes in an isle of a church, and the vicar will not suffer him to make a sepulchre there. *No. Lib. Intra. 8. b. sect. 7.*
- Sheriff.* Against a sheriff upon a false return. *Lib. Intra. 11. a. sect. 1.*

(C) *For what things this action lies.*

**A**gainst a tenant by *elegit*, that holds the lands *Trees.*  
after his money tendered him, and cuts the  
trees. 21 *Edw.* 3. 16.

So if the tenant at will cuts the trees. *Litt.* 15.

a. 8 *Rep.* 13. b. 48 *Edw.* 3. 25.

If a bailiff cuts trees without cause. 18 *Edw.*

4. 27.

Against the owner of the land in which I have a *Way,*  
way, and he straitens it. 33 *Hen.* 6. 26.

For trenching of it. *Lib. Intra.* 616. c. *sect.* 1.

For any manner of disturbance in my passage or  
part of my way, so that I cannot pass so commodi-  
ously as I did before. 14 *Hen.* 8. 31. 21 *Hen.* 7.

35. 22 *Hen.* 6. 15. 10 *Hen.* 7. 21.

If the whole way be stopped by one that is not  
owner of the soil, it lies. 22 *Hen.* 5. 33 *Hen.* 6.

26. 10 *Hen.* 7. 21.

4. *Stopping*  
of it.

If *A.* stops my way and leases the land to *B.* it  
lies against *B.* if he do not open it, for continuing  
of the wrong; but if *A.* build a house and leases it  
to *B.* there *B.* cannot pull it down for to lay open  
my way, for this is waste in *B.* *Trin.* 13 *Jac. Regis.*

But for stopping of a way in my own land, tres-  
pass *vi & armis* lies, and not this action. 31 *Ed.* 3.  
38. 13 *Hen.* 7. 26.

But for stopping of a highway, the defendant  
shall be punished in the leet, and not by this action,  
unless the party had a special loss; for a special loss  
admits of a special remedy. 27 *Hen.* 8. 26. 5 *Ed.*  
4. 2. 6. 7 *Ed.* 4. 8. 33 *Hen.* 6. 26. 5 *Rep.* 73. a.  
21 *Hen.* 7. 35. 9 *Rep.* 113. 21 *Hen.* 7. 35.

If *A.* says, that *B.* hath right in my land for  
years, an action lies. 1 *Rep.* 177. *No. Lib. Intra.*  
30. a. *sect.* 27. But I ought to shew how I am  
prejudiced by his saying so.

*Slander of*  
*my title.*

*A.* brought an action upon the case against *B.* be-  
cause that *B.* published and declared falsely, that he  
had the lease of the land of *A.* and that he intended  
to sell his land, and was thereby hindred; *B.* said,

that he had an indenture of lease, as in the count is mentioned, and traverseth that he forged it not.

1. When *B.* claims a right, though he had none; yet the action lies not, for it appears not whether he had a right or not. 2. The count is good, because it was against the knowledge of *B.* that it was forged. 3. *Sciens* is not traversable. 4 *Rep.* 18. *a.*

*Land.*

For stopping a ditch by which my land is surrounded with water. *Nat. Br.* 88. *c.* 89. *m.* 39. *Hen.* 6. 32. 11 *Hen.* 4. 82. 14 *Hen.* 8. 31.

For not scouring a ditch, by which my land is overflowed. *Reg. Orig.* 100. *a.*

For breaking of a sea-bank, by which my land is surrounded. *Nat. Br.* 86. *f.* 89. *b.* & *c.* *Reg. Orig.* 95. *a.*

It lies not for erecting of cony-burroughs, by which I lose part of the profits of my land, because the party that erected them had no property in the conies, for they are *feræ naturæ*. 5 *Rep.* 104.

*Trade.*

If one hath a bakehouse by prescription, and I set up another by him to his prejudice; for the law favours and protects antient rights, presuming they had lawful commencements.

*Distress.*

1. For disturbing my bailiff to distrain for an amercement. 18 *Hen.* 6. 9. *pl.* 20.

2. For disturbing me to distrain or to attach. *Nat. Br.* 102. *f.*

3. For distraining more suitors to come to my leet than ought to be. *Nat. Br.* 94 *g.* 4 *Rep.* 94. *b.* *Reg. Orig.* 103.

4. For distraining parsons or vicars in their spiritual possessions. *Nat. Br.* 94. *e.*

*Fair and market.*

1. Against him that sets up a new fair or market against my fair or market. 22 *Hen.* 6. 14. 11 *Hen.* 4. 74.

2. For disturbing customers to come to the market. 11 *Hen.* 4. 47. 41 *Edw.* 3. 24. 29 *Edw.* 3. 18. 9 *Hen.* 6. 45. *Nat. Br.* 91. *g.* 2 *Ed.* 3. 32. *pl.* 9.

3. For disturbing me to hold a fair or market. 16 *Edw.* 2.

4. For

4. For selling in another place out of the fair.  
*Reg. Orig.* 107. *a.* & *b.*

1. When a deed is lost. 34 *Hen.* 6. 4. *viz.* by *Deeds*.  
negligence.

2. When the seal is broken off. 39 *Hen.* 6. 46.  
*Lib. Intra.* 7. *b.* *sect.* 1, & 3. either wilfully or  
negligently.

3. For deeds sold with the land, and not deli-  
vered upon request. *Lib. Intra.* 5. *a.* *sect.* 2.

4. For forging a statute staple or merchant. *Nat.*  
*Br.* 96. *b.* 17 *Ed.* 3. 49. *Regist. Orig.* 115. *a.*  
& *b.* to recompence the party wronged, though  
the party may also be indicted for it.

1. For returning me summoned, and thereby *False re-*  
judgment is given by default against me, where I *turn.*  
never was summoned; but this was after the death  
of the summoners. 8 *Hen.* 6. 1. 6 *Edw.* 4. 3. 8.  
26 *Affize* 48.

2. For returning a *nihil* where I had lands. *Nat.*  
*Br.* 93. *b.* 31 *Edw.* 3. *Proccs* 55.

1. For setting up a new ferry to the nuisance of *Ferry.*  
my ferry. 22 *Hen.* 6. 14.

2. For threatening me or passengers, by which I  
lose the profits of my ferry. 22 *H.* 6. 17. *pl.* 32.

For disturbing my foldage. *No. Lib. Intra.* 14. *Foldage.*  
*d. sect.* 12.

For disturbing one to have certain walks in the *Forest.*  
forest of *Selwood.* 5 *Rep.* 76.

For erecting a warren or dove-house this action *Warren.*  
lies not, although it be to the nuisance of another.  
5 *Rep.* 104.

For executing process in my liberty. *Nat. Br. Liberty.*  
95. *b.* *Reg. Orig.* 103, 104. 5 *Ed.* 3. 150. *pl.* 20.

1. For hindring my light by making a wood pile. *House.*  
9 *Rep.* 57. *b.* the count there, and 58. *No. Lib. In-*  
*tra.* 19. *b.* *sect.* 16. 7 *Ed.* 3. 261 *pl.* 15.

2. For infecting the air of my parlour with an  
hogs skin. *Coke, ibid.*

3. With a dye house. *Coke, ibid.*  
*Hill.* 9 *Jac. Ban. Regis, Hughes and Keme. A.*  
had an antient house in *London*, *B.* builds a new one  
which stops the light of *A.* *Per curiam*, 1. That a



man cannot by the custom of *London*, erect a new house, where there was not one before, to stop the lights of the antient house. 2. Upon an antient foundation a man may erect a new house, and stop the antient lights of his neighbour; for by the same reason that his neighbour erected his house more high, may the other at any time erect his; but he cannot enlage his in breadth or length to stop the lights of his neighbour. *Vid.* 22 *H.* 6. 15. 2.

*Manor.*

For removing a plaint out of my manor without cause, 27 *Hen.* 6. 4. for thereby the profits of my court are lessened.

For taking an estray within my manor or liberty, 13 *Ed.* 3. *breve* 674. 31 *Ed.* 3. *breve* 333. but *ibid.* it lies not before seizure of the stray, for before the lord was not intituled unto it.

*Meer-stone.*

For removing a meer-stone, though one of them be tenant in common. 1 *Hen.* 5. 1. *Lib. Intra.* 9. *c.* *sect.* 1.

*Mill.*

1. For disturbing my customers to come to my mill. 11 *Hen.* 4. 47. 41 *Ed.* 3. 24. 29 *Ed.* 18. 9 *Hen.* 6. 45.

2. For erecting a new mill. *Lib. Intra.* 9. *b.* *sect.* 2. *d.* *sect.* 1.

*Office.*

1. For disturbing to take seizure of an office. 6 *Ed.* 3. 9.

2. For disturbing the steward to hold court. *Lib. Intra.* 5. *b.* *sect.* 1.

3. For disturbing to take the profits which belong to the office. 9 *Rich.* 2.

4. Against an escheator that returns contrary to that which was found by office. 9 *Hen.* 6. 60.

5. If he make a return where no office was found, 21 *Ed.* 4. 23, & 27. for he is not a judge but officer. 9 *Hen.* 6. 60.

*Piscary.*

For erecting of a dye house which poisons my water, by reason whereof my fish dies. 9 *Rep.* 59. *a.*

*Procurement.*

1. For releasing to me with warranty, and procuring another to sue me. 34 *Ed.* 3. 20.

If I sue a schoolmaster for erecting a school in the *School*.  
same town, the action lies not; for it is no nuisance.

11 Hen. 4. 47. pl. 21. 22 Hen. 6. 14. *Prisott*.

If A. says that he hath right in my land for *Slander of*  
years, an action lies. 1 Rep. 177. No. Lib. Intra. my title.  
30. a. *sc̄*. 27.

1. For stopping a ditch, by which my land is *Land*.  
surrounded. Nat. Br. 88. c. 89. m. 39 Hen. 6.

32. 11 Hen. 4. 82. 14 Hen. 8. 31.

For not scouring a ditch, by which my land is  
overflowed. Reg. Orig. 100. a.

For breaking of a sea-bank, by which my land is  
surrounded. Nat. Br. 86. f. 89. b. & c. Reg.  
Orig. 95. a. *Vid. antea*.

It lies not for erecting of cony burroughs, by  
which I lose the profits of my land, because the  
party had no property in them, 5 Rep. 204. and  
I may take them upon my land and justify it. *Vid.*  
*antea*.

1. If one hath the trade of a bake-house by pre- *Trade*.  
scription for the whole town, and another erects  
another and sells, an action lies. 8 Rep. 125. 19  
Rich. 2. *Action sur Case* 52.

2. For using the trade of a dyer in B. without  
licence of the archbishop of York. Reg. Orig. 105  
& 106. Coke *ibidem*.

Tenant at will makes voluntary waste, an action  
of waste lies against him. Litt. 15. a. 14 H. 8. 12.  
5 Rep. b. 48 Ed. 3. 25. Dyer 121. pl. 17. 11 H.  
6. 38. and not an action on the case.

For diverting of part of the stream by the owner *Water-*  
of the land, by which the stream flows over. 12 H. *course*.  
4. 47. 21 H. 7. 30. Dyer 248. pl. 80. 4 Rep.  
86. 3 Eliz. Dyer 195. pl. 37.

For stopping a pit that one hath for water, al- *Watering-*  
though it is not a common watering place. 21 H. *places*.  
7. 35. No Lib. Intra. 8. d. *sc̄*. 15.

1. For chasing sheep into the water. 2 H. 7. *Chasing*  
11. b. *sheep*.

2. For taking of sheep delivered to me for a  
year to dung my land. Nat. 26. B. & D.

1. Against him that I give money to give to my attorney, and he gives it to my adversary. 20 *H. 7. 9.*

*For goods  
lent and  
wasted.*

2. If I send my plate or other goods to one, and he wastes them, or misuseth them, or converts them to his own use. 27 *Hen. 8. 25.* 28 *Hen. 8. Dyer 22. pl. 137.* 20 *Hen. 7. 4.* 2 *Hen. 7. 11.* 2 *Ed. 4. 5.* 18 *Edw. 4. 23.* 21 *Edw. 4. 19.* *Crook, 2 Hen. 8. 160. pl. 2.*

3. If a bailiff lends them to *B.* and he wastes them, it lies against *B.* 12 *Ed. 4. 13.*

4. Upon bailment of a bag, in which was 20 *l.* and he breaks the seal. 21 *Ed. 4. 30. pl. 25.*

5. So far an obligation. 39 *Hen. 6. 46.*

6. Against a baily of beasts which kills them. *Litt. 15. a. Dyer 121. pl. 17.* 14 *Hen. 8. 12.*

*Goods not  
delivered.*

The executor comes to the heir 31 days after the death of the testator, and demands the goods that are in the house, and he refuses to deliver them;

1. This is a convenient time; 2. This wrong is punishable. *Mich. 7 Jac. Ban. Reg.*

*Woods and  
estovers.*

1. *A.* sold 20 cords of wood to *B.* to have by assignment, and afterwards sold 4000 to *C.* to have at his election, and assigns to *B.* which he shall cut, and *C.* takes them, *B.* shall have an action against *C.* for the first bargain was made with him. 5 *Rep. 24.*

2. Tenant for years shall have estovers in the wood of *B.* which shall be cut, or have an action. 9 *Rep. 112. b.*

*Carrier.*

1. Against a carrier that breaks pots and glasses. 2 *Hen. 7. 2.*

2. If the things be delivered to the servant of the carrier, yet an action lies against the master. *Pasch. 9 Jac. B. R.*

*Horse.*

Against a smith that pricks my horse. *Nat. Br. 94. d.* 17 *Ed. 4. 43.* 11 *Ed. 4. 6.* 56 *Ed. 3. 19.* 3 *Hen. 6. 36.* 14 *Hen. 6. 18.* *Reg. Orig. 106. a.* 48 *Ed. 3. 6. pl. 11.*

And if the smith lends the horse to another, who pricks him, action lies against the second. 12 *Ed. 4. 13.*

A servant brought a horse to the smith, who pricked him, by which the service of the master is neglected, the master shall have an action. *Hill.*

*Jac. B. R.*

For taking my pigeons with engines, 16 *Ed. Pigeons.*  
4. 7. or shooting of them.

For playing with false dice, *Nat. Br. 95. d Dice and*  
*Reg. Orig. 240. No. Lib. Intra. 8. sect. 8. or for cards.*  
cheating with true.

The same law of false cards. 11 *Rep. 87. b.*

1. For distraining of a horse of a prelate when *Distress.*  
he had other things distrainable. *Nat. Br. 93. 1.*  
*Reg. Orig. 100. b. 4 Rep. 95. a.*

2. For distraining in a highway, or in any spiri-  
tual land belonging to a church, against the articles  
of the clerks. 94 *E. Regist. 100. b.*

3. For distraining one to come to my leet, when  
he owed no suit to my leet. *Nat. Br. 94. g.*

For distraining cattle of the plough, or lambs,  
where there was other sufficient distress. *Lib. In-*  
*tra. 226. d. Distress, Nat. Br. 90. b.*

The count shall not shew that there was other  
sufficient distress, but it shall be *contra formam sta-*  
*tuti*, which provides against such distraining. 14  
*Eliz. Dyer 312. pl 68.*

And it lies when the tenant hath made agreement  
for the rent, and yet is distrained. 18 *Ed. 2.*

By a gaoler against a prisoner that escapes being *Escape*  
committed *per auditors* *Nat. Br. 95. c. 130. b. from a*

For tearing an obligation delivered to be kept. *gaoler.*  
30 *Hen. 6. 44. Lib. Intra. 7. b. sect 1. Deeds.*

Against a ferryman that surcharges his boat, by *Ferryman.*  
which my horse is drowned 22 *Affize 41.*

1. Forging of an obligation that is put in suit *Forgery*  
against me. 5 *Ed. 4. 126. pl. 44. 4 Rep. 18 b. and coun-*  
42 *Affize 8. terfeiting.*

2. For forging of a resignation. *Reg. Orig.*  
114. *b.*

3 For forging of a will. 5 *Ed. 4. 120 b.*

4. For counterfeiting a letter in the name of his  
master, that the plaintiff would lend his master 20*l.*  
upon which the plaintiff delivered 20*l.* to the de-



pendant. 33 Hen. 8. c. 1. *Pasib.* 7 Jac. B. R.  
In all these cases an indictment also lies, because it  
is *contra pacem*.

*Grain drowned.* For putting something in my ditch, whereby my  
grain is drowned. *Reg. Orig.* 95. b. 97. a.

*Menace.* For menacing to take my goods, if I do not give  
him 20l. 7 Ed. 4. 2. 2.

*Pales.* For taking away my pales, *quare* whether tres-  
pass *vi & armis* doth not lie. 15 Ed. 4. 4. *Choke.*

*Piles.* For putting in a common river piles, by which  
my oxen perish. *Nat. Br.* 92. f.

*Protection.* For taking my goods after protection granted,  
*Reg. Orig.* 12. a. 2. for I may plead my protec-  
tion upon a replevin.

*Rescous.* By a sheriff against one that rescued one in exe-  
cution. *Dyer* 241. pl. 47.

*Servants.* 1. For taking my servant out of my service.  
19 Rich. 2. *Action upon the Case* 52.

*Bar.* Not his servant is a good plea in bar, 20 Hen.  
7. 4. pl. 13. *Fineux*; of the action for the defen-  
dant to plead, *viz. tempore captionis*.

*Servant.* 2. For enticing my servant to depart, and him  
to retain. 11 Hen. 4. 23.

3. For menacing my servant; *per quod, &c.*  
*Reg. Orig.* 94. b.

4. For assault and battery of my servant, *per*  
*quod, &c.* *Reg. Orig.* 102. a. *Nat. Br.* 91.  
*Lib. Intra.* 613. b. sect. 19. 673. c. sect. 1.

5. For assault and battery, and imprisonment,  
till the plaintiff made fine, *per quod damnificatus,*  
*&c.* 19 H. 6. 35. pl. 37.

6. For battery, mayhem and imprisonment, *per*  
*quod damnificatus, &c.* *Cro.* 7 H. 8. 180. pl. 4.

7. When his dog bites my servant, *per quod, &c.*  
*Reg.* 111. a. *servitium amisi*; he must count, that  
he kept him, knowing him to be accustomed to bite.

(D) *For doing of wrong to the damage of*  
*another touching his body.*

*Arrest.* 1. **F**OR arresting me in the name of B. without  
his consent. 7 Hen. 6. 43. pl. 19.

2. For arresting one without cause. 8 Ed. 4. 13.  
But

But this ought to be by collusion to vex me, 43 Ed. 3. 20. for if there be *probabilis causa* it lies not, for one may be deceived in the law.

3. For arresting me in *London*, knowing I was privileged in Bank. 7 Hen. 6. 45.

For arresting me and bringing me before a justice, where I was indicted and acquitted; and this is good cause of action although the time of the arrest is not shewed, because of the vexation.

*Trin. 7 Jac. B. R.*

For procuring another to be indicted without *Indictment*. cause. *Nat. Br. 114. d. 116. a.*

For procuring *B.* to be indicted for a common barretor, and he is acquitted *secundum leges Angliæ*, 1. Good, although that the count was not, that he was lawfully acquitted, for it is so implied.

2. He ought to have counted *quod inde acquiesatus fuit*, or words that do amount to so much.

*Mich. 7 Jac. B. R. Rot. 407.*

For threatening by word or writing to beat me, *Menace*: if I come out of my house. 17 Ed. 3. 4. Vid.

*Brañon, lib. 3. cap. 4. fol. 113. b.*

For threatening another of life and member. 10 Ed. 4. 6. *Lib. Intra 661. b. sect. 1, 2.*

For putting poison in my meat, *Reg. Orig. 102. Poison*. a. wittingly, to the hazard of my life or health.

Against a chirurghion that impairs the body by his medicine. 21 Hen. 6. 55. 11 Rich. 2. *Action upon the Case 37.*

(E) *For slander.*

**N**O more costs than damages can be recovered in slander; therefore to mention what words are actionable is not necessary in this small compendium.

(F) *For doing of wrong to the damage of another, touching suits in law.*

**F**OR suing me in the admiralty for matter *Admiralty*. about *neque supra altum mare, neque ultra mare*; per 2 Hen. 4. c. 11. 5 *Marizæ*. Dyer 59. pl. 27. Against

*Attach-  
ment.*

Against a bailly of a franchise, that fraudulently delivers to the owner his goods attached. *Nat. Br. 93 f. 2 Ed. 3. 43.*

*Attorney.*

1. Against an attorney that makes default, by which my land is lost. *Lib. Intra. 2. a. f. 8. 9.*

2. For suing debt in my name without my assent. *7 Hen. 6. 43. 45.*

3. For appearing without warrant and imparling where the party is misnamed, because his client loseth the advantage of the plea, *15 Hen. 7. 14.* of misnomer.

For taking an obligation in his own name, where it ought to be taken in his master's. *20 Hen. 6. 25.*

4. It lies for outlawing me in the name of B. that was dead at the time. *7 Rep. 1. a.*

5. It lies for appearing in default of the tenant, and confessing the action without warrant. *9 Ed. 4. 13. 43 Ed. 3. 20. Reg. Orig. 113. a.*

6. Against him that will be my attorney without my assent. *43 Ed. 3. 14.*

*Counsellor.*

Against a counsellor retained for a certain sum, and he discovers his counsel, and was of counsel with the other party, and good, although he doth not shew for what sum he was retained. *11 Hen. 6. 2. 18. Action upon the Case 7. Lib. Intra. 2. b. f. 8. 2.*

Against a counsellor that is an ambidexter. *Lib. Intra. 2. b. f. 8. 3.*

*Christian  
court.*

Against him that sues me for tithes in Court Christian, although I shew him a composition by me time out of memory. *8 Ed. 4. 13.*

*Escape.*

1. Against a sheriff that suffers one to escape upon a *copias ad computandum*; for he shall not have an action of debt, because there is no duty certain. *15 Ed. 4. 19. 16 Ed. 4. 2. 3. Escape 37.*

2. Against a gaoler that lets one escape that was committed upon the statute of labourers, *14 H. 6. 8. viz. by the master of the servant committed.*

3. Against a gaoler that suffers one to escape taken upon a *copias* upon a statute merchant, viz. by the consuee of the statute at whose suit the prosecution is. *Nat. Br. 93. a.*

4. Against

4. Against a gaoler that suffers one to escape upon execution. *Lib. Intra.* 8. c. *sect.* 1.

5. Against a prisoner that breaks prison and escapes, *Nat. Br.* 95. c. 130. b. *viz.* by the gaoler who is to answer for the escape.

6. Against an officer that arrests one at my suit, and suffers him to escape. *Reg.* 111. a. *& b.*

1. *A.* having goods of *B.* in his house, the sheriff comes and takes the goods in execution, and *A.* him disturbs; 1. If the sheriff gives notice to *A.* and after he disturbs him, the plaintiff shall have this action against him, otherwise not. 2. *A.* may keep his house fast till notice. 3. The count is not sufficient, that *A. promissorum non ignarus, &c.* but it ought to be alledged precisely that he had notice. 5 *Rep.* 93. a. *Execution.*

1. For returning cattle estrayed, which are dead, *False return.* 32 *Hen.* 6. 27. which is a false return, and may prejudice the party.

2. For making other return than the bailiff made, 36 *Hen.* 6. 1. 30 *Affize* 5. *viz.* the bailiff of a liberty.

3. Against a commissary that returns a *jure patronatus* otherways than it is found. 22 *H.* 6. 30.

4. Upon a *devastavit* returned falsely, *Lib. Intr.* 11. a. *sect.* 11 *Hen.* 6. 37. b. *viz.* where there was none, whereby the executor is chargeable *de bonis propriis.*

Against a deputy of a sheriff, 20 *H.* 6. *Deccit* 11. for the law takes notice of such an officer.

5. For returning a *nihil* where the party has sufficient. *Lib. Intr.* 11. c. *sect.* 2. *Nat. Br.* 39. b.

6. Against an escheator that certifies an office otherways that it is found, or that certifies one where there is none found. 21 *Ed.* 3. 23. 9 *H.* 6. 60. *Reg. Orig.* 115. b.

7. By the new sheriff against the old sheriff for returning one sufficient, which is not, by which the plaintiff, *viz.* the new sheriff, is charged in issue. 19 *H.* 6. 38. b.

8. Against a sheriff that makes a precept to one that is not bailly of a franchise, 38 *Affize* 13 as if he were bailly of a franchise. 9. If



9. If the sheriff returns not a *cepi corpus, sed languidus*, when the defendant was in good health, he, *viz.* the defendant, shall have an action of false imprisonment, 11 H. 6. 42. pl. 39. 2 H. 6. 5. a. And the other, *viz.* the plaintiff, an action upon the case, 21 H. 6. 5. a. for it is a false return.

10. In a false judgment, if the sheriff returns that there is no such things, &c. if it be false, action lies. 10 Ed. 3. 389. pl. 35.

11. For the sheriff shall not be amerced, 44 Ed. 3. 3. pl. 11. for it is no contempt to the court, and they will take it for a good execution of the process till the contrary appear.

12. For not returning a writ delivered by bill by the old sheriff, *Westm.* 2. c. 39. 42 Affixe 12. But note 8 Ed. 3. 3. 298. pl. 26. *Herle*.

13. It lies against a sheriff for a false return. *Doct. & Stud.* 134. b. 19 H. 6. 29. 5. 72.

14. For returning summoned where he was dead, action lies. 8 Ed. 3. 330. pl. 1.

Forgery.

For suing one upon a forged obligation. 4 Rep. 18. b. 2.

Imbeziling.

Against a *custos brevium* for imbeziling a writ to him delivered. 7 H. 4. 6.

For inciting another to imbezil a writ. 19 H. 6. 26.

If my attorney or deputy of the sheriff imbezil a record, deceit lies. 10 H. 6. 30.

Marshal.

For suing me before the steward or marshal where I am not of the household. 3 H. 6. *Estoppel* 18. 10 H. 6. 13. for every one ought to be sued in the courts at the common law, and which are proper to try the action.

Plea.

1. Against a bailiff of a franchise that discontinues his plea, *Nat. Br.* 93. f. the writ there, where it ought not to be.

2. Against a bailiff of a franchise that sues after the plaint removed, *Nat. Br.* 93. e. 14 Ed. 3. *Action upon the Case* 118.

Procurement.

Against him that procures one to say, he is *A. B.* the plaintiff in the suit, and confesses the action, &c. *Reg. Orig.* 113. b. for this is deceit.

Against

Against him in *Court Christian* that proceeds after prohibition delivered. *Nat. Br. 92. e.* *Prohibition.*

Against him who gets a protection of the king for one, and gives it to another of the same name, 30 *H. 6. 18. viz. by him who is thus deceived in the trust reposed in the party.* *Protection.*

Against a tenant in a *præcipe* that hath a protection to come to *Westminster*, and stays at *Gloucester*, 15. *Ed. 4. 18. Reg. Orig. 119. b. 20 H. 6. 10.* for this is an abuse of the law, and prejudice to the party.

Against him that gets a protection, where he was not in service of the king, *Lib. Intr. 492. d. the Count 492. sect. 2, 3.* and so abuse the king and the party.

Against him that purchases a writ, whereby I am sued to pay a fine without my privity. *Reg. of a writ. 112. a.* *Purchase.*

*Quare impedit, 112. a. & b.*

Against an officer in *Ban. Regis*, which purchases a *superfedeas* for one that I have a plaint against in *London*, upon a false suggestion that the defendant is his servant. 21 *Ed. 4. 23.*

But upon surmise that he hath an action depending there it lies not, because the court cannot have notice. *Ibid. 2.*

Against an officer in *Chancery*, which purchaseth a *superfedeas* for his servant, where he was not his servant, retained before the time. 11 *H. 6. 8.*

1. By a gaoler against rescoussors of one in execution. *Dyer 241. pl. 45.* *Rescous.*

Against him that sues me on purpose to vex me, 8 *Ed. 3. 43. 1 Ed. 3. 20.* for the law hates vexatious suits. *Vexation.*

But for causeless suits no action, 11 *Eliz. Dyer 285.* for, *pro falsa actionis prosecutione nulla sequatur pœna*, 2 *Rich. 3. 9. pl. 22.* so that there was probable cause.

2. Against him that sues me for a thing arbitrated before that the day comes to perform the award, *Reg. 111. a.* for this unjust vexation.

(G) For

(G) *For the not doing of a thing which ought to be done by the law, touching a thing hereditary, to the damage of another.*

*Admission.*

**A** Copyholder by custom that may nominate him which shall succeed him, and names one, and prays to be admitted, and offers reasonable fine to the lord which refuseth; the copyholder shall not have an action of the case against the lord, because before admittance he had no right. *Pasch. 13 Jac. b.*

*Reparations.*

1. Against him that ought to repair a bridge, by which I have a way to my manor. 11 H. 4. 82. 45 Ed. 3. 17.

2. Against him which ought to repair a mound or bank, by which my land is drowned. 29 Ed. 3. 32. 12 H. 4. 7. Nat. Br. 93 g. 7 H. 4. 31. pl. 13.

3. So of the banks of a river. Nat. Br. 93. g. 15 Ed. 4. 18. 45 Ed. 3. 17. 7 H. 4. 8. 31. 11 H. 4. 82, 83. 33 H. 6. 26. 29 Ed. 3. 32. pl. 49.

But if they be broke by tempest, no action lies. 29 Ed. 3. 32. pl. 49.

4. For not scouring ditches, 11 Pich. 2. an action upon the case lies. 36 Nat. Pr. 93. g.

5. For not repairing of a gutter, Lib. Intr. 10. d. f. 1. whereby another is damnified

For not repairing a house that is ready to fall upon my house, Crooke 22 H. 7. 98 pl. 4 per Fineux & Brudenell; for I am like to suffer damage, and an action may sometimes be brought to prevent a wrong.

*To hold court.*

Against a lord in antient demesne which will not hold his court, 11 Ed. 2. Action upon the case 46 lies; for the tenant may be prejudiced thereby.

*Toll.*

1. Against a miller that refuseth to grind toll free for one that is toll free. 43 Ed. 4. 24. Crooke 130. pl. 100. per Kible.

2. Against

2. Against him that bought or sold in my market or fair without paying toll. 7 H. 4. 44. pl. 11.

3. But if one pails over my passage or port where I have toll, and doth not pay it, *quare* what remedy, 21 H. 7. 16. pl. 25. It seems an action on the case doth lie, if it be demanded.

(H) *For not doing a thing which ought to be done by the law, to the damage of another, concerning chattels.*

A. Borrowed a horse of B. which died suddenly without his default, action lies not, 40 Ed. 3. 36. for this is the act of God, and not the fault of the borrower. *Borrowed.*

It lies not against an attorney that will not do his office, unless he be retained, 20 H. 7. 9. for he is but in the nature of a servant, and is not bound to be retained. *Attorney.*

Against a farrier that applies medicine, and cures not my horse. But if no default be in him, it lies not, 19 H. 6. 49. 43 Ed. 3. 33. 48 Ed. 3. 6. for he doth his best according to his skill. *Farrier and smith.*

1. Against him that will not deliver my pledge upon tender of the money borrowed. Nat. Br. 86. c. Reg. 21. b. Lib. Intr. 8. b. f. 1. *Pledge.*

(I) *For not doing of a thing which ought to be done by law, to the damage of another touching his body.*

A. Gainst an innkeeper that refuseth to lodge me. 39 H. 6. 18. *Innkeeper.*

A good bar that his house was full, and had no room, 5 Maria, Dyer 158. pl. 32. for he is not bound to provide lodging out of his own house. *Bar.*

Against a surgeon that takes upon him a cure, and neglects it, 48 Ed. 3. 6. whereby the cure is become impossible, or is retarded. *Surgeon.*

Against a victualler that refuseth to sell to me. 39 H. 6. 18. *Victualler.*

(K) *For*



(K) *For not doing of a thing which ought to be done by the law, to the damage of another touching suits in law.*

*Attorney.*

1. **I**T lies against an attorney that is retained, and makes default, *Lib. Intr. 2. a. sect. 1. Reg. Orig. 113. a.* if his client be prejudiced by it.

*Clerk of assize.*

Against a clerk of assize that takes a fee, and enters not the jury, 34 *H. 6. 4.* for thereby the cause is delayed by his nonseafance.

*To hold court.*

Against a lord of a manor that will not hold his court. 11 *Ed. 2. Action upon the Case 46.*

*Sheriff.*

1. Against a sheriff that will not execute process, 14 *H. 7. 23.* the party being shewed to him, 8 *Ed. 4. 14. 17.* for justice is thereby delayed.

2. For the plaintiff against a sheriff that will not return his writ. 2 *H. 6. 5.* 8 *Ed. 4. 14. 7.*

3. Against a sheriff that will not return an outlawry. 42 *Assize 12.*

4. For delivering distress upon a second deliverance, and not returning the writ. 2 *Ed. 3. 43.*

### (L) *Assumpsit.*

I. *For the not doing of a thing which ought to be done by the agreement of the party, to the damage of another touching things hereditary.*

**I**F it be by covenant it lies, and needs not any consideration to be averred. 2 *H. 7. 11. 21 H. 6. 55.*

If it be by word, then it ought to be upon a consideration, otherwise it is but *nudum pactum, non oritur actio.*

*Consideration.*

The consideration is either expressed in words, or implied by law; in every contract there is an *assumpsit* or promise implied by law. 4 *Rep 94.*

If it be expressed, it ought to be shewed in the count or declaration. 3 *H. 6. 36.* 11 *H. 4. 33.*

1. Concord

1. Concord pleaded, viz after *assumpsit* made. *General bar.*  
*Lib. Intr. 6. c. sect. 6.*

2. *Non assumpsit*, and this a man may plead although there is no consideration. *Pascb. 26 Eliz. B. R.*

A good bar that he promised upon condition, which is not performed. *Lib. Intr. 5. d. sect. 1.*

*Non emissit* the land of him, a good bar. *Lib. Intr. 6. b. sect. 5. viz.* An action brought for monies promised to be paid upon a purchase of lives.

That the plaintiff discharged him of the bargain, a good bar. *Lib. Intr. 685. c. sect.*

The action lies, 1. Against him that sells land to me, and promises to make an estate, and does it not. *To make an estate.*

3 *H. 7. 14.* 14 *H. 8. 15.* 21 *H. 7. 41.* 2 *H. 7. 11, 12.* 20 *H. 7. 9.* 22 *H. 6. 44.* 20 *H. 6. 34.* *Lib. Intr. 5. d. sect. 1. and 685. b. sect. 1.* the writ, *Lib. Intr. 6. a. sect. 2.*

2. Against him that sells land to me, and promises to give me seisin of it, and does not. *Reg. 112. a.*

3. *A.* promises to convey land to such a person as *B.* shall name, and the defendant shews, that he conveyed it to *B.* this is good; for it shall be intended a nomination in *B.* inasmuch that he did accept of it. *Mich. 13 Jac. C. B.*

4. Against him that first sells land to me, and afterwards sells it to another. *Lib. Intr. 685. b. sect. 1. Nat. Br. 98. f. 20 H. 6. 34.*

5. The same law is if he grants a rent, and afterwards infeoffs me, not giving me notice of the rent. 20 *H. 6. 34.*

Against an alien that brought salt to London, and promises to the mayor to pay so much as shall be due for cranage, 18 *Eliz. Dyer 352. pl. 27.* and doth it not. *Cranage.*

1. For not building a house according to his promise. 2 *H. 6. 55.* 21 *H. 7. 41.* 20 *H. 7. 9.* 14 *H. 6. 18.* *Nat. Br. 145. g.* *House.*

II. For not doing of a thing which ought to be done by the agreement of the parties touching chattels.

*Agistment.*

**A**gainst him that puts in cattle without paying for the agistment. *Nat. Br. 86. b. Reg. Orig. 92. a.*

*Annual payment.*

Against him that promises to pay 10*l.* a year for land for 4 years, and fails of the first payment, action lies presently. 3 *Rep. 22. a. 3 Mariae. Dyer 113. pl. 54. pro tanto.*

*Trees cutting.*

Against him that promises to cut trees and carry them to my house. *Reg. 109 b.*

*Assent.*

*A.* grants his term to *B.* if *C.* agree, *B.* promises 20*l.* to *C.* for his assent, this is a good *assumpsit*. *Trin. 12 Jac. C. B. Griesly and Louth.*

1. Against one that promises to re deliver money, and doth not. *Lib. Intra. 10. sect. 1.*

2. Against a bailee that takes upon him to keep cattle safe, and doth not, *Lib. Intra. 9. a. sect. 1. & fol. 3. b. sect. 1.* but they are lost by his negligence.

3. But if he promises to guard the goods, and afterwards refuses, no action lies, *Doct. & Student 102. b.* if there were no consideration taken to do it.

*Carrier.*

1. Against a carrier that undertakes to carry goods safe, and doth not, 2 *Hen. 7. 11. Lib. Intra. 2. d. sect. 1.* the carrier is chargeable without such a promise *per legem terræ.*

2. Against him that promises to carry wine, and breaks the pipe by negligence, *Reg. 110. a. Reg. Orig. 112. a.*

*Coach.*

Against him who promises to make a coach, and doth not. *Nat. Br. 94. a.*

But the plaintiff ought to count, that he did give money for the doing it, otherwise it is but *Nudum pactum, unde oritur actio.* 3 *Hen. 6. 36. pl. 33.* for there was not reason why he should do it

Against

Against him that takes upon him to repair my Dove-dove-house, and doth it ill, *Reg. Orig.* 110. b. *house.* whereby my house becomes of less profit. A work if ill done is accounted as not done.

A. promises to deliver a deed upon request, the request ought to be shewed precisely, otherways if it be of a thing due before, or upon a sale; for in the former case the request is traversable, but not in the latter. *Pasch.* 28 *Eliz.* C. B. *Delivery of a deed.*

1. Against a smith that takes upon him to shoe my horse, and doth not. 14 *Hen.* 6. 18. *Farrier and smith.*

2. Or to cure him, 19 *Hen.* 6. 49. *Reg. Orig.* 119. b. but here must be a consideration precedent.

It is not sufficient to do all he can, but he is bound to cure him: But upon a general retainer, without taking upon him the cure, it is not so; for there the law implies only, that he would do his best endeavour to do it. 43 *Edw.* 3. 33. 45 *Edw.* 3. 17. 48 *Edw.* 3. 6. 27 *Affize* 56.

And the writ shall not say *contra pacem*. 43 *Edw.* 3. 33.

3. *Quare tam negligenter & improvide imposuit medicinas, &c. quod equus mortuus est*, 43 *Edw.* 3. 33. pl. 38. 19 *Hen.* 6. 49. for the law punisheth negligence.

1. Against a ferryman that takes upon him to carry one over the water, and doth it not, and this without consideration, because his fare is certain, 22 *Affize* 41. and recoverable by law, for the law makes the contract. *Ferryman.*

2. For surcharging his boat, by which my beast is drowned, 22 *Affize* 41. *Action upon the case* 40. for this is a misfeasance.

An administratrix desires to be forborn till such a time, and then she will pay the debt; this is a good *assumpsit*, 9 *Rep.* 94. a. and the plaintiff needs not say in the count that she hath assets, for it shall be intended; but it ought to be given in evidence, for she is not chargeable if she have not *quid pro quo*. 9 *Rep.* 92, 93, 94, & fol. 90. b. *Forbearance.*

But



*Promises  
for others.*

But no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt or default of another, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands or tenements, or any interest in them, or upon any agreement that is not to be performed within one year from the making, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him authorized. *Stat. 29 C. 2. c. 3 § 4.*

*Save  
harmless.*

1. My servant being in prison, I request his enlargement, and promise to save *A.* harmless, an action lies if I do it not, but without request not, *10 Eliz. Dyer 272. pl. 31. 2.*

2. *A.* being bail for *B.* in *B. R.* *B.* promises to save him harmless; yet *A.* shall not have an action against *B.* although he pay the money, if no *capias* be awarded against the principal, nor *scire facias* against the bail, *Trin. 7 Jac. B. R. Bolles and Jones*, error upon judgment in *C. B.* for here is no due proceedings in law against either.

3. *A.* being indebted to *B.* prays *C.* to be bound to *B.* for the debt, and he will be bound to *C.* &c. *C.* is bound to *B.* &c. *A.* refuseth to be bound to *C.*; *C.* shall have an action against *A.* for it is a good consideration, insomuch that *C.* is liable to the debt. *Mich. 9 Jac. B. R.*

*Infant.*

4. An infant borrows money, *B.* is bound to pay it, at full age the infant promises to save him harmless, action lies upon it; for although the infant was not liable in law, yet in conscience he was, and this sufficeth to maintain an action upon the case, which is an equitable action; for the consideration is good. *Trin. 29 Eliz. B. R.*

*Sufferance.*

*A.* promises 10 *l.* to *B.* if he suffer *C.* to enjoy the land; there although *C.* enjoy it not, yet if *A.* agree,

agree, and do not interrupt C. the action lies.  
*Pasch. 15 Jac. B. R.*

A. being a copyholder, makes B. his executor, and intends to surrender, to the intent that B. should satisfy a debt to D.; the son of A. promises A. that if he do not surrender, but suffer the land to descend, he will satisfy the debt; A. dies, B. shall have an action against the son; for it is a good consideration. *Hill. 9 Jac. B. R.*

A. promises to pay to B. for his reasonable board for such a time as he shall be with him; B. shews that he was with him 10 months, and that 5 s. the month is reasonable, amounting in all to 50 s. this is good. *Pasch. 30 Eliz. B. R.*

*Tabling  
and lodg-  
ing.*

1. For money upon the sale of any personal things, 33 *Hen. 8. Br. Action upon the Case* 105, 110. 2 *Rich. 3. 14. Com. 102.* upon an *indebitatus assumpsit*; for the law creates a promise.

*Vendor.*

For in every contract there is an *assumpsit* implied. 4 *Rep. 94.*

2. In an action for money upon the sale of a thing, he needs not count that he was possessor *ut de bonis propriis*. *Trin. 7 Jac. B. R.*

3. Against a purveyor or servant that bought goods for his master, and promises payment. *Dyer 230 pl. 56. 12 Hen. 8. 12. Q.* If it lies not also against the master.

4. A. promises to pay to B. such sums of money as B. shall disburse of his own money for cloth, to the use of A. the defendant, this is a good consideration; for by the buying of the cloth, the property was in A. forthwith. *Trin. 9 Jac. B. R.*

1. Against a seller of corn to be delivered at a certain day, and doth not. 21 *Hen. 6. 55. 20 Hen. 7. 9. 28 Hen. 8. Dyer 22. pl. 138. & fol. 113. pl. 55. 4 Rep. 94. b. Quære*, if no damage appear.

*Vendee.*

2. For delivering good and merchantable corn, and doth not, 6 *Edw. 2. 6. Dyer 75. pl. 23. Lib. intra. 4. b. sect. 2.* but special damage must be alleged.

The administratrix promises to pay a debt, &c. The judgment is brought against Baron & Feme, then

then

then the judgment against him shall be general, & *prædictus P. & M. uxor ejus in misericordia.* 9 Rep. 93. No. Lib. Intr. 2. sect. 3.

But upon plea, that the testator did not assume, costs and damages shall be *de bonis propriis*, if the testator had not sufficient, *No. Lib. Intra. 1 b. sect. 1.* for the false plea.

*The writ.* Upon *assumpsit* by the husband and wife, made to the wife *dum sola fuit*, the writ shall say, *ad dampnum ipsorum*; for the husband shall have the damages, *ideoque fuit ad dampnum ipsorum.* Hill. 9 Jac. B. R. Wolverton and his wife against Day.

### III. For not doing a thing which ought to be done by agreement touching the body.

*Physician  
or surgeon.*

**A**gainst a physician or chirurgion for not curing a malady, or not applying a medicine. 14 H. 6. 18. 43 Edw. 3. 33. 21 Hen. 6. 55. 48 Edw. 3. 6. pl. 11. Reg. Orig. 105. b. 112. a.

For applying a medicine that impairs the Mayhem. 11 Rich. *Action upon the Case* 37. 11 Hen. 6. 18. pl. 10. 21 Hen. 6. 55. b.

But note, in all these cases he ought to take upon him the cure absolutely, 19 Hen. 49. 48 Edw. 3. 6. else the action lies not.

### IV. For not doing of a thing which ought to be done by agreement of the parties touching suits in law.

*Clerk.*

**A**gainst a clerk that promises to enrol a deed, and doth it not. 34 Hen. 6. 4.

*Serjeant.*

*Counsellor.*

Against a serjeant or counsellor that promises to plead for me, and doth it not, 14 Hen. 6. 18. if I retain him and give him his fee, else not.

V. *For not doing of a thing, where a man is bound to do it in one manner, and he doth it in another.*

**A** Gainst him that promises to plough my land, *Plough my*  
and doth it in unseasonable time, 14 *Hen. land.*  
6. 18. 3 *Hen.* 6. 36. for the law implies he must  
do it for my best advantage.

Against an attorney that takes an obligation in *Attorney.*  
his own name, when it should have been in mine,  
20 *Hen.* 6. 25. 2. if an action of deceit doth not  
lie.

Against a carpenter that undertakes to build a *Carpenter.*  
house in such a form and builds it in another, *Nat.*  
*Br.* 145. g. 2 *Hen.* 4. 9. 21 *Hen.* 7. 41. 20 *Hen.*  
6. 35. 2. if he built it in a better form, and more  
for the benefit of the owner, and to his own loss.

Against him that hath a crane, and spoils my *Cranage.*  
merchandise, *Lib. Intra.* 3. c. *sect.* 1. this is mis-  
feasance.

Against a farrier that takes upon him to cure my *Farrier.*  
horse, and applies unwholesome medicines, &c.  
19 *Hen.* 6. 49. whereby my horse is made worse.

For pricking my horse, 46 *Edw.* 3. 2. 3. 10.  
*Nat. Br.* 94. d. 18 *Edw.* 3. 6. pl. 11. for it is the  
duty of an artificer to do his office well and truly ;  
and this is implied in law upon his undertaking to  
use his art.

Against a serjeant at law that is retained to *Misplead-*  
plead, and mispleads, 14 *Hen.* 6. 18. for this is *er.*  
mistake, and to his client's prejudice it may be ;  
but if it be not, *tunc quære.* To misplead is to  
plead otherwise than he is instructed by his client.

VI. *For negligent suffering of a thing to be done to the damage of another.*

**A.** Borrowed a horse of me which dies suddenly, *Borrowed.*  
an action lies not, 40 *Edw.* 3. 6. for the  
borrower was in no fault.



But if the thing be used in other manner than it was lent, and dies, an action lies, *Doct. & Stud.* 29. for this is misusing it, and contrary to the agreement.

But if it be but in the same manner that it was lent, and dies, no action lies, *Doct. & Stud.* 29. for it was lent to be used, though not misused.

A. borrowed a horse, and a house fell upon him; there if the house fell upon him being feeble, action lies, otherwise not, *Doct. & Stud.* 128. for he might have foreseen the danger, and prevented it.

*Burning a house.*

Against him that keeps not well his fire, by which my house is burned, being adjoining. 2 *Hen.* 4. 18. 8 *Edw.* 4. 19. *pl.* 30.

Although his own house be burned. 33 *Hen.* 6. 1. *Lib. Intra.* 8. a. *sect.* 1.

It lies although his servant do it; but not if a stranger do it of malice. 33 *Hen.* 6. 1. 2 *Hen.* 7. 18. *Doct. & Stud.* 137.

It lies not if it be burned suddenly, and the cause not known. 42 *Affize* 8. 2 *Hen.* 4. 18.

For losing a release, 34 *Hen.* 6. 4. for the releasee may be prejudiced thereby.

So of a box. *Lib. Intra.* 9. a. *sect.* 1.

*Dog.*

Against him that suffers his dog to bite my sheep. 28 *Hen.* 8. *Dyer* 25. *pl.* 102. & *fol.* 29. *pl.* 195. 28 *Hen.* 6. 7. *pl.* 7. *Lib. Intra.* 616. b. *sect.* 1. *Reg. Orig.* 110. b.

But then the master ought to know that he would bite them, *ibidem*; for then he might have prevented it, and so is punishable for not doing it.

But *sciens* is not traversable; but may be given in evidence, 4 *Rep.* 188. for if he did not know it, he may plead not guilty, and the plaintiff must prove he knew it.

If the owner of the dog bring him to the master of the sheep to do justice upon him, it lies not, 7 *Edw.* 3. *Bar* 290. *viz.* upon the first notice or knowledge of it, otherwise not.

For suffering his dog to bite my servant, *Reg. Orig.* 111. a. *per quod servitium amiss.* else not, as it seems. For

For hurting of an ox, *Reg. Orig.* 111. *a.* where-  
by he loseth his work, or is hindered in his satting.

1. Against a warden of the Fleet, that suffers *Escape*.  
one to escape that was taken upon a *capias ad com-  
putandum.* 15 *Ed.* 4. 19 *Lib. Intr.* 8. c. sect. 1.

2. Against a sheriff that suffers one to escape,  
that was taken upon a statute-merchant. *Reg.*  
*Orig.* 98. *b.* *Nat. Br.* 93. *a.*

Against an inn-keeper, that suffers the goods of *Inn-keeper*.  
his guests to be stole. 4 *Rep.* 32. *Nat. Br.* 94. *b.*  
*Reg. Orig.* 104. *a.* 105. *a.* 22 *H.* 6. 21. 42  
*Affize* 17.

1. But note, 1. This ought to be a common inn,  
and it shall be shewed in the count, but not in the  
writ, 11 *H.* 4. 45. 22 *H.* 6. 21. *pl.* 38. 8 *Rep.*  
32. *Dyer* 206. *pl.* 9. 2 *H.* 4. not in the writ,  
because that is more short, & *rem breviter enarrat*;  
but the count ought to expresse things more fully.

2. It ought to be a traveller that lodges there,  
otherwise the action lies not. 8 *Rep.* 32.

3. He shall declare of nothing but what was  
within his inn; for if he bid the inn-keeper put his  
horse to pasture, or put him to pasture of his own  
accord, unless the inn-keeper request him to do it,  
it lies not. 8 *Rep.* 32. *a.*

4. He ought safely to keep the goods within his  
inn at his peril, 42 *Affize* 17. for it is no excuse  
that he delivered the key to the guest, 42 *Ed.* 3.  
11. *pl.* 13. 11 *H.* 4. 45. 22 *H.* 6. 38. or that  
the guest did not acquaint him with his goods, 42  
*Ed.* 3. 11. except the guest will not trust the inn-  
keeper, but will have the key. *Q.*

Or that he knew not the felons, 22 *H.* 6. 38. *a.*  
for he must keep them safe against persons, except  
foreign enemies.

But if the companion or servant, or any other  
that the guest desires to lie with him, rob him, the  
inn-keeper shall not be accountable. 8 *Rep.* 33. *a.*  
22 *H.* 6. 38. *b.* 22. *a.*

Or if he say his house is full, and the other says  
he will make a shift, and be robbed. 5 *Marix*,  
*Dyer* 158. *pl.* 32.

Or if he command him to put his goods in such a place, and he will not, but suffer them to lie in the open court. 10 *Eliz. Dyer* 266 *pl.* 9.

And although the writ is but *bona & catalla*, yet evidences and all other deeds are included; the writ in this case shall be general, but the count special. 8 *Rep.* 33.

But an inn keeper shall not be accountable for wrong done to the person of his guest. 8 *Rep.* 33. *a. & b.*

*Servant.*

1. Against a shepherd, that suffers my sheep to be drowned, 2 *H.* 7. 11. *pl.* 9. 5 *Rep.* 13. *b.* 12 *Ed.* 3. 4. 13. *Dyer* 121. *pl.* 17. by negligence.

## VII. For deceit in bargains and agreements with warranty.

1. **T**HE warranty of a thing sold is the cause of an action in case of vendition, as well as of corruption. 19 *H.* 6. 9.

2. And the warranty ought to be at the time of the sale, 15 *H.* 7. 41. *Nat. Br.* 98. *L.* and not afterwards, 6 *Ed.* 6. *Dyer* 75. *pl.* 28. else not good.

3. It ought to be the owner of the thing, and not by a stranger; and upon the sale by the owner, and not by a servant. 11 *Ed.* 4. 6.

It is not material whether the price be paid or not, for debt lies for it. 9 *H.* 7. 21. *pl.* 2.

*Horse.*

Against the seller of a horse that is sick, and is warranted sound. *Nat. Br.* 94. *c.* 7 *Rich.* 2. 42. *Reg. Orig.* 108. *a.* *Lib. Intra.* 9. *b.* *sect.* 1.

Or a lame horse warranted sound. 31 *H.* 6. 11 *Statbam.*

A strained horse it lies not, because the buyer hath the view. 13 *H.* 4. *pl.* 4. 2. if he warrant him sound.

*Cloth.*

Against a seller of cloth, that warrants it well fulled when it is raw. 11 *H.* 6. 221.

Against him that warrants it of such a length, and this upon sale and warranty of the servant, it lies against the master, 11 *Ed.* 4. 6. for it lies not

not against the servant, *ibidem*; for the cloth was the master's.

Against him that sells grain, and warrants it to *Grain*. be good, *Lib. Intr. 9. b. sect. 1. Reg. Orig. 111.*

*a.* whereas it is musty or corrupted.

Against him that warrants herrings, *Reg. Orig. Herring.* 96. *a.* in the number and the goodness.

Against him that sells a saphire instead of a diamond, *Kitchin. 174.*

Against a seller of wood, and shews part, and *Wood.* warrants the rest to be good. 14 *H. 6. 22. pl. 66.*

Against a seller of corrupt wine with warranty. *Nat. Br. 94. c. 9 H. 6. 35. 7 H. 4. 14. pl. 19.* that is sound and wholesome.

If the servant sold it by covin of the master, action lies against the master, 9 *H. 6. 53. pl. 37.* for it is the master's act.

### VIII. For deceits in bargains and agreements, without warranty.

1. **A** Gainst him that sells a horse not sound, *Deceit in* knowing him to be so, without warran- *bargain.* ty, 20 *H. 6. 34. 13 H. 4. 2. Kitchin 174. Q.* for it seems it lies not; yet if it doth, it is because the law hates deceit in contracts, for it hinders commerce, which is beneficial to the common-wealth.

For selling a house to another that was not his *House.* own, 42 *Affize 8. 4 Rep. 18. b.* for this is a fraud.

For selling cloth that is naught, knowing it to *Cloth.* be so, without warranty, 21 *H. 7. 91. pl. 16.*

Against him that promises to deliver good gum, and doth not, *Mich. 7 Jac. B. R.*

Against him that sells wine mixed with water, *Wine.* *Nat. B. R. 88. f.*

For uttering corrupt victual, knowing it to be *Vitual.* so, 19 *H. 6. 53. 22 H. 7. 91. pl. 16. 11 Ed.*

4. 6. 6.

Against him that sells good wax, and delivers ill, *Wax.*

6 *Ed. 6. Dyer 75. pl. 18. Q.* whether in all these



these cases an indictment at the common law will not lie: It seems it will.

## (M) Trover.

## I. Of what things it lies.

Money.

1. **I**T lies for money out of a purse upon special matter, that he lost it, and the other found it, *Trin.* 43 *Eliz.* C. B. *Pas.* 24 *Eliz.* in the Exchequer; but not generally, for money cannot be known, and so the plaintiff can fix no property in himself.

Sheep.

It lies for 20 sheep. 5 *Rep.* 109.

Chain-door.

It lies for a chain door found and sold. 3 *Maria*, *Dyer* 121. *pl.* 14.

Horse.

It lies of a horse.

Deeds.

Husband and wife shall have this action for a deed by which an annuity was granted to the wife; for the wife should have it, if she survive the husband. *Trin.* 40 *Eliz.* C. B. and the husband is to have it during his life, *viz.* to make use of upon occasion.

Fruiment

It lies for 20 rooks of corn. *Trin.* 38 *Eliz.* C. B.

and grain.

It lies of four bushels of wheat. *Trin.* 12 *Jac.* B. R.

Jewels.

For delivering of jewels, &c. in a box to B. who dies, and they came to C. who breaks the box and converts them. 20 *Hen.* 7. 4. *pl.* 13.

That he did not convert them to his own use is a good bar; for the trover and breaking of the box are but conveyances to the conversion, 20 *H.* 7. 4. *pl.* 13. and not the ground of the action.

Wool.

It lies of *quingaginta pondus* of wool *ad valentiam*, &c. for *per curiam*, *pondus* shall be taken one pound weight, because this weight is more certainly known throughout all the country. *Mich.* 9 *Jac.* B. R.

Wood.

It lies of 100 load of wood, and 40 beeches. *No. Lib. Intra.* 41. *b. sect.* 33.

Pippins.

It lies of 40 measures of pippins, *scil.* bushels. *Mich.* 9 *Jac.* in Exchequer.

Certiorari.

## Certiorari.

B. R.

**A** *Certiorari* on a writ of error not to be made out, after a *certiorari* in the same cause first presented, and returned, without motion. *Reg. E. 11 C. 1.*

C. B.

**A** *Certiorari* directed to the court of Pleas of the bishop of *Ely*, to be indorsed by a judge of this court, with the words *Iste of Ely* and the judge's name before sealed. *Reg. E. 13 W. 3.*

## Costs.

(A) *Where allowed.*

*PER Cur'* defendant to be allowed his costs *Non prof.* against an executor on a *non prof.* for want of a replication; and the prothonotaries agreed, that it was so also, for want of a declaration, or a replication to a plea in abatement, because it was his own default. *Rep. & Ca. of Practice 15.*

But in case upon a promise made to the testator, no costs allowed against an executor on a nonsuit at the assizes. *Ibid. 20.*

The costs of a nonsuit taxed upon a rule of court, to be paid to the executor after the defendant's death. *Ibid. 113.*

An administrator nonsuited on trial in trover, the trover in the intestate's time, and the conversion in the plaintiff's, he must pay costs. *Ibid. 61.*

No costs payable by an administrator on a nonsuit, upon a prohibition prayed by him. *Ibid. 157.*

An executor must pay costs if he discontinues. *Discontinuance.*

The plaintiff in prohibition ought to have the costs of the suggestion itself and all subsequent costs. *Prohibition.*

*Ibid. 11.*

On judgment by default in prohibition the plaintiff to have a writ to inquire of his damages, and his

costs taxed from the time the rule for the prohibition was made absolute. *Ibid.* 20.

*Quare impedit.* Where judgment is for the defendant on a demurrer, in a *quare impedit*, he shall have costs. *Ibid.* 4.

*Costs added on postea.* In case, the jury on trial found damages, but not costs, motion that the costs might be added, granted. *Ibid.* 7.

*Qui tam.* Where a statute gives a penalty to a party injured he shall have costs, but otherwise in the case of a common informer. *Ib.* 87.

*Prochein amy.* A *prochein amy* to pay costs for not proceeding to trial. *Ibid.* 32.

*Non suit.* The defendant is allowed costs, on plaintiff's being nonsuited at the assizes upon an issue on a plea in abatement. *Ibid.* 35.

*Pauper.* Costs to be taxed against a *pauper* for not proceeding to trial. *Ibid.* 47.

*After ne recipiatur.* Plaintiff to pay costs for not proceeding to trial according to notice, notwithstanding a *ne recipiatur* entered, for his default in not entering his cause in due time. *Ibid.* 60.

*Witness.* The charge of a witness allowed on motion (tho' the judge would not let him be examined, being of opinion that he was not a material evidence) upon the plaintiff's affidavit that he was a material one, and his attorney's affidavit that he was advised by his counsel that he was such. *Ibid.* 98.

*Verdict for some defendants judgment against others.* Costs on a verdict for some of the defendants, though the others let judgment go by default. *Ibid.* 107.

The costs for striking a special jury to be paid by the party applying for it; and the other reasonable costs relating to the special jury, to be paid to the party obtaining a verdict. *Ibid.* 138.

No costs to be paid on a *remanet*, nor on a reference, unless by agreement, for the costs to attend the event. *Ibid.* Vid. tit. *Damages, Notices, &c.*

(B) *Of taxing costs.*

**O**N an agreement in writing to pay debt and costs, the costs are not to be taxed as between attorney and client. *Rep. & Ca. Practice* 69. *After agreement.*

On an award to pay costs, the costs to be taxed as between party and party, and not as between attorney and client, except there be a special order or agreement for that purpose, and so in any case. *Ibid.* 70. *Vid. tit. Attornies.*

Covenant.

(A) *In what court it lies.*

1. **I**N the county or hundred court. *Nat. Br.* 145. *e.*

2. In any court of the lord of a manor. *Nat. Br.* 145. *e.*

3. In *London*, *Nat. Br.* 146. *a.* and other corporations.

1. *Marshalsea* between two of the household of the king, 10 *Rep.* 74. *a.* otherwise not.

2. In the court of the lord of the manor by special grant. 44 *Ed.* 3. 28. *pl.* 18. *& fol.* 37. *pl.* 30. *Lib. Intr.* 296. *a. sect.* 1. 50 *Affize*, *pl.* 9.

In *eyre*, good, 1 *Ed.* 3. 10. *pl.* 34. 8 *Ed.* 3. 27. 18 *Ed.* 3. 40. *pl.* 33. that is before justices in *eyre* or *itinerantes*.

In *C. B.*

Before the justices of the grand sessions in *Wales*, 34 *H.* 8. *c.* 26.

(B) *Who shall have it.*

**A**dministrator shall have covenant by the equity of the *Stat. de* 31 *Ed.* 3. *c.* 11. 9 *Rep.* 40. *strat r.* *Admini-*  
*a. made for executors.*

Assignee shall have covenant where it is made to one and his assigns, *Nat. Br.* 145. *c.* *Reg. Orig.* 165. *b.* for the assignee is in the place of the assignor. *Assignee.*



## Covenant.

Assignee shall have covenant without shewing the deed of covenant, for he may not have it, *Trin.* 36 *Eliz. B. R.* but there, if the lessee for years by *stoppel* grant over his term, the assignee shall not have covenant, because the assignor hath nothing in the land, but only an *stoppel* against the lessor not to oust him.

Assignee by word shall have covenant, 3 *Rep.* 63. *a.* for such an assignment is good.

Assignee of assignee shall have covenant, 5 *Rep.* 71. *b.* and so *in infinitum*, as it seems, so long as the estate assigned continues, if the covenant go with the estate.

Assignee of one coparcener shall have covenant against the other coparcener to acquit him of the suit, because the covenant goes with the land. 5 *Rep.* 18. *a.* 42 *Ed.* 3 3.

Lessor covenants to repair the house lett, the assignee shall have covenant against him, because this is annexed to the estate: So the husband of the wife that is a termor, and a tenant *per statute* merchant or staple, and every one that comes to the land, 5 *Rep.* 17. to which the covenant is annexed.

So in all cases where it is annexed to the estate, *Nat. Br.* 146. *c.* 48 *Ed.* 3. and not to the person otherwise than in relation to the land.

Assignee of a reversion shall have covenant as well as the lessor shall have it, *per* 32 *H.* 8. *c.* 34. but this is when it concerns the things demised, and not collateral covenants, 5 *Rep.* 18. *a.* for in respect of reversion of the thing let, he comes in room of the lessor in privity of estate.

Assignee shall have covenant, upon covenant in law, 4 *Rep.* 80. *b.* 9 *Eliz.* *Dyer* 257. *pl.* 13. where it goes with the estate.

Lessee covenants with the lessor and his heirs to repair the house, the assignee of the lessor shall have covenant, *Mich.* 9 *Jac. B. R.* for it goes with the house.

*Husband  
and wife.*

Lease for years to the husband and wife, the lessor ousts them, they may join in covenant, because after the death of the husband she shall have a term,

if

if he grant it not over, 47 *Ed. 3.* 12. *pl. 11.* and so she hath a possibility of interest.

The commonalty of *D.* covenants with the mayor and commonalty of *L.* that they shall be quit of toll, &c. in *D.* and after one burges in *D.* takes toll of one in *L.* covenant lies for one corporation against another, 48 *Ed. 3.* 17. *pl. 2.* It may be brought by the mayor and commonalty of one corporation against the mayor and commonalty of the other corporation.

Executor shall have covenant for covenant made to his testator for a personal thing, for the personal estate is his to the use of the testator's will. *Nat. Br. 143. d. & Regist. 165. b. n.* Note; *De conventionibus pro executoribus non invenitur breve in Regist. sed pro assignatis, tamen potest fieri pro executoribus tam bene quam pro assignatis, nam eadem est ratio de utrisque.* *Executor.*

*A.* leases to *B.* for life for 12 years, and *B.* dies within the 12 years, the executors of *B.* shall have it until 12 years, &c. *B.* dies, *A.* ousts the executors within 12 years, they shall have covenant. 19 *Ed. 3.* *Covenant 24.*

Executor of an executor shall have covenant by the common law. 19 *Ed. 3.* *Covenant 24.* *Com. of an executor. 290. Lib. Intra. 134. b. sect. 1.* and so forwards, for the right dies not.

The heir shall have covenant, if the deed be made to him and his heirs, *Nat. Br. 145. c.* 16 *Eliz. Dyer 338. pl. 39.* but this was to infeoff him and his heirs: So that this holds not generally, but where the heir is interested in the covenant. *Heir.*

*A.* infeoffs *B.* in fee, rendering for 8 years one rose, and afterwards 20 roses, *B.* dies, his heir within age, the lord recovers the land by reason of collusion, the heir at full age shall have covenant, 8 *Ed. 3.* *Covenant 7.* in respect of his privity to the covenant.

*A.* covenants with *B.* and *C.* and their heirs, and which first dies (being parcener) the heir of one shall *Joint tenant.*

shall have covenant sole, 16 *Eliz. Dyer* 338. *pl. viz.* of him that first dies.

When any of the covenantees shall have several interests or estates, and the covenant is made with them & *cum quolibet eorum*, they shall have several covenants, otherways not, 5 *Rep.* 22. *a.* in respect of their several interests.

*Lessee.*

Lessee for years by deed poll is ousted by the lessor, he shall have covenant, *Nat. Br.* 145. *l.* 21 *Ed.* 4. 30. *pl.* 25. for the lease implies a covenant to enjoy during the term.

But if a stranger ousts him without title, he shall not have covenant, *Nat. Br.* 145. *l.* 22 *H.* 6. 52. *pl.* 56. But if he had a colourable title and ousts him, *quere.*

Although it be by verdict, 4 *Rep.* 80. *b.* for the verdict may not be according to law. *Q.*

And although the lessor warrant to him during the term, 26 *H.* 8. 3. *pl.* 11. for the warranty is not so general; but if he warrant it against all other men. *Q.*

But if a stranger that hath title oust him, then it lies, *Nat. Br.* 145. 32 *H.* 6. 32. *pl.* 27. for that proves he had no power to let.

But lessee for life shall not have covenant upon such ousting, for this cannot devest him of the freehold, 26 *H.* 8. 16. *Covenant* 10. *Nat. Br.* 145. *m.* if in the covenant it be not expressed.

But 13 *Ed.* 3. *Fines* 165. if a lease be to *A.* without impeachment of waste, and waste be brought against him, *A.* shall have covenant; for the lease implies a covenant, that he shall not be sued for waste.

Tenant for life shall not have the benefit of warranty, if he be not in possession, 26 *H.* 8. 3. *pl.* 11. *viz.* at the time of the warranty.

Lessee for years shall have covenant upon a demise and grant, 4 *Rep.* 80. *b.* and 5 *Rep.* 17. *a.* that is, if the lease runs, that lessor doth demise and grant. *Q.*

*Recusant.*

Recusant shall not have an action of covenant for any thing seized into the king's hands. *Stat.* 1 *Jac.*

c. 5. by virtue of the lessor's recusancy; for the common law takes no notice of recusancy.

## (C) *Against whom it lies.*

**A**dministrator, 13 *Ed. 3. c. 11.* 9 *Rep. 40. a.* *Admini-  
strator.*  
upon a covenant made by the intestate.

Assignee of a termor, without naming how the condition of the thing extends to a thing *in esse*, parcel of the demise. 5 *Rep. 16. a. & fol. 24.* *Assignee.*

This extends to him that comes to the demise any way, 5 *Rep. 17. b. viz.* any legal way; but *quere*, if the lessee be ousted by one who hath no interest.

So if the covenant extends to a thing to be newly made, if it shall be made upon the demised land, the assignee shall be bound by express covenant to the lessor and his assignees. 5 *Rep. 16. b. 25 H. 8. Br. Covenant 32.*

*A.* leases for years to *B.* and covenants to suffer him to enjoy; there the assignee of *A.* of the reversion is liable, though not named, 9 *Eliz Dyer* 255. *pl. 4.* for he comes in interest of estate in the room of *A.* who covenanted.

When the covenant extends to a thing which had not essence at the time of the demise, the assignee is not liable without naming him, 5 *Rep. 16. b.* as where the lessee covenants to build a new house upon land let.

When the demise is of a personal thing, the assignee is not liable by express name, 5 *Rep. 16, 17.* because the covenant goes to the person and not to the estate.

If the demise be of land and a personal thing, the assignee is not bound by express name for the personality, for there can be no privity between the lessor and assignee, 5 *Rep. 16, & 17.* but for the realty he shall be bound.

The statute of 32 *H. 8. c. 34.* extends to covenants, which touch the thing demised, and not to collateral covenants which concern it not, for the statute looks at the estate.

It



*Executor.*

It lies against executors, *Reg. Orig.* 165. *b.* *Nat. Br.* 145. *b.* and this is although they be not named, 28 *H.* 8. *Dyer* 14. *pl.* 69. 45 *Ed.* 3. 17. *pl.* 4. 47 *Ed.* 3. 22. 48 *Ed.* 3. 2. *pl.* 4. 9 *Eliz.* *Dyer* 255. *pl.* 4. for they represent the person of the testator, and come in his stead.

But all the executors ought to be named, 47 *Ed.* 3. 22. *pl.* 20. in the writ and declaration.

*Feme  
covert.*

A lease is made to the husband and wife, the husband covenants to make assurance for the rent; this binds not the wife, because it is collateral, 45 *Ed.* 3. 11. *pl.* 7. for the lessor hath remedy for the rent without such assurance.

But if they covenant, that they will not assign without his consent; there the wife is bound, if the husband die, 18 *H.* 8. *Dyer* 13. *pl.* 66. for else the lessee is without remedy.

*Heir.*

Heir shall be bound by covenant of his ancestor if he be named, *Reg. Orig.* 165. *b.* else not.

And altho' it be broken by his ancestor, 4 *Ed.* 3. 130. *pl.* 71. as well as if broken by himself.

But not if he be not named, 28 *H.* 8. *Dyer* 14. *pl.* 69. 32 *H.* 6. 32. *p.* 27. for then the law will intend only, that the executor or administrator shall be bound.

*Infant.*

Infant cannot be bound by his covenant to be an apprentice *per* common law, but by custom of *London* he may. 21 *Ed.* 4. 6. *pl.* 17.

But then he shall be of the age of 14 years, 21 *H.* 6. 31. which are accounted years of discretion, to distinguish what may be for his benefit, and what not.

But an infant of 12 years shall be bound by his covenant to serve in husbandry, *Nat. Br.* 168. *d.* 7 *H.* 4. 5. *pl.* 29. 9 *H.* 6. 10. *pl.* 29. 21 *H.* 6. 34. for husbandry is for the good of the commonwealth, and the knowledge and maintenance of it are much favoured in law.

But if he be within 12 years he shall not be bound, 2 *H.* 4. 18. *pl.* 7. 29 *Ed.* 3. 27. *pl.* 29. 41 *Ed.* 3. 17. *pl.* 1. for under those years he is indeed

deed incapable of learning the art, by reason of disability of body and understanding also.

Lessee covenants to leave the house in good case, *Lessee.*  
it lies not against him till the end of the term. *Nat. Br. 145. k. 12 Ed. 2. Covenant 2.*

But if the covenant be *sustentare & reparare*, it lies presently, *45 Eliz. Dyer 324. pl. 34.* and whensoever it shall be out of repair, during the term.

So if he covenants to leave the timber in good plight, this is void for the impossibility. *5 Rep. 21. a. 7 Rep. 15. a.*

For if the trees are thrown down by tempest, it lies not, *40 Ed. 3. 6. a. 1 Rep. 98. a.* for this could not be prevented.

But if the house be wasted by enemies or tempest, he ought to repair by reason of the covenant, or build it, *40 Ed. 3. 6. a. Doct. & Stud. 66. b. 29 H. 8. Dyer 33. pl. 10.* if there be an express covenant to do it.

Lessor is bound by express covenant or covenants *Lessor.*  
in law.

It lies against a lessor if he ousts his termor, *Nat. Br. 145. l. 21 Ed. 4. 30. pl. 25. 9 Rep. 80. a. 32 H. 6. 32. pl. 27.* without cause, and during the term.

A parson leases his glebe, and resigns during the term, covenant lies against him, because it is his own act and wrong, *21 H. 4. 3.* and the successor may avoid the lease. *Parson.*

If one become pledge for another to perform *Pledge.*  
such a covenant, the action lies against the pledge, *Nat. Br. 146. b.* for he is in the place of the principal.

But then he ought to charge him as principal *Lease.*  
*39 Ed. 3. 9. pl. 14.*

Or shew that the principal is not sufficient. *40 Ed. 3. 5. Covenant 16.*

It lies against him that should make a deed, *Nat. Br. 146. f.* that covenants to do it, and does it not.

(D) For

(D) *For what things it lies.**Guardian  
in socage.*

**G**uardian in socage grants the custody of the ward to *A.* who covenants to render an account to the heir at full age, covenant lieth for not doing of it, *Reg. Orig.* 165. *b.* *Nat. Br.* 145. *b.* for the guardian. 2. Whether account lies not for the heir.

Covenant lies against him that doth not according to his covenant by deed, *Nat. Br.* 145. *a.* that is, doth not perform the whole covenant.

But if it be not by deed, it lies not, *Reg. Orig.* 165. *b.* *Nat. Br.* 145. *a.* & *g.* 7 *Rich.* 2. *Deeds* 160. *Nat. Br.* 168. *f.* 14 *H.* 4. 26. but an action upon the case upon the *assumpsit*.

Unless it be in *London* by custom, *Nat. Br.* 146. *a.* 22 *Ed.* 4. 2. *pl.* 6. *Vavisor.* 27 *H.* 6. 10. *Covenant* 11.

*Mill.*

*A.* gives a mill to *B.* &c. and that with a proviso, *quod nec ego, nec hæredes mei construemur molendinum in,* &c. Covenant lies against the heir, if he or his father erect a mill there, 4 *Ed.* 2. 130. *pl.* 71. for the heir is bound by his father's covenant.

*Termor.*

*A.* termor deviseth the term by will to his wife during her widowhood, the remainder to *C.* and dies, the lessor sells the fee of the wife, and covenants that he would discharge all former titles, &c. she marries *C.* in the mean time, covenant lies against the bargainor by the *baron & feme*, if *C.* do oust them during the term; for it was his own folly to make such a sale and covenant. 10 *Rep.* 51.

*A.* leases to *B.* for years, if *C.* lives so long, and covenants that he had power to do it, *C.* being dead at the time, covenant lies, if *A.* had not a good estate in it, 9 *Rep.* 60. though *C.* was dead; for if he had no good estate, he had no power to let, and so his covenant implied in law is broken.

*A.* leases to *B.* for years lands in which *C.* had a copyhold estate, and covenants that the lessor shall suffer him quietly to hold the same, without trouble  
either

either of the lessor or any other. *B.* enters, *C.* ousts him, covenant lies not, because all the sequel depends upon this word (suffer), the which extends only to the lessor, and his executors and assigns, 9 *Eliz.* *Dyer* 255. *pl.* 4. and not to the copyholder, who hath a distinct interest from the lessor.

Lessor covenants that the lessee shall quietly and peaceably have, &c. without the disturbance or hindrance of the lessor, the lessor sues the lessee in *Chancery*, and supposes that the lease was only made to try a title, an action of covenant lies not for such breach, *Trin.* 11 *Jac.* *C. B. Rot.* 384. for this was but a lease in trust only for the benefit of the lessor, and not of the lessee.

Lessee by deed poll shall have a covenant against the lessor, if he ousts him, *Nat. Br.* 145. *l.* 35 *H.* 8. *Dyer* 57. *pl.* 24. for the action ariseth upon the covenant of the lessor, which may be by deed poll. *Lessee.*

Lessee for years shall have covenant upon a demise and grant, 4 *Rep.* 80. *b.* viz. upon the words demise and grant in the lease, for they imply a covenant.

Lease for years with warranty, the lessee ousted shall have covenant, 26 *H.* 8. 3. *pl.* 13. by all, 9 *Eliz.* *Dyer* 257. *pl.* 13. for the warranty implieth a covenant for quiet enjoying.

*A.* covenants to serve *B.* for years, and dies, no action lies, *quia mors omnia solvit*, 48 *Ed.* 3. 2. *b.* *pl.* 4. *Finchden.*

*Hill.* 33 *Eliz.* *B. R. Wilson* and *Mapes*, *A* parson leases his rectory, and covenants to save harmless the lessee, concerning the lands and profits for one year against *Blunt*; *Blunt* enters within the year; covenant lies, because it is expressed against a certain person. *Quere*, If it had been general.

Lessee covenants that he will not assign his term over, by which it may come to *D.* the lessee assigns it to *K.* *Per curiam*, covenant lies, for he hath put the power out of him, *Trin.* 13 *Jac.* *C. B.* and it may come to *D.* whether he will or no.

Of a fine levied of rent, a writ of covenant lies. 22 *Ed.* 4. 2. *pl.* 6.

(E) *Bar*



(E) *Bar in covenant.**Accord.*

**W**HEN a certain duty accrues by the covenant at the time of the making of it, an accord with satisfaction is no plea, 6 *Rep.* 44. *a.* for such an accord cannot discharge the duty. But a release may be pleaded in bar.

But where no certain duty accrues until the subsequent act or wrong, there accord with satisfaction is a good plea, 6 *Rep.* 44. for he may make satisfaction for the wrong by the agreement of the covenantee.

*Disturb-  
ance.*

*A.* covenants to gather the rents in *D.* and he pleads, that he was interrupted by the plaintiff, and so could not do it; this is a good bar, 13 *H.* 7. 34. *pl.* 2. for the plaintiff shall not take advantage of his own wrong.

Lessee covenants to surrender before the term ends, and a stranger that hath right enters upon the lessee, this is a discharge, because the lessee is disabled by an act in law. *Hill.* 41 *Eliz.* C. B. 45 *Ed.* 3. 48.

*Perform-  
ance.*

Performance generally a good plea. 6 *H.* 4. 8. *pl.* 34.

In a covenant upon a demise by indenture, and an eviction by a stranger by a higher title, it is no bar to traverse the possession of the plaintiff without particular cause, shewing how the other had title, because it is by indenture, *Trin.* 3 *Jac.* B. R. *Stile* ver. *Hearing*, which is a general *estoppel* without shewing of special matter to avoid it.

*A.* covenants to make a good estate in copyhold land to *B.* before *Easter*, during the life of *C.* it is no plea to say, that it was surrendered to the lord by his procurement to the use of *C.* if he shews not that he was admitted; for nothing vests in him to whose use it is till admittance, *Mich.* 15 *Jac.* B. R. *Stiles* ver. *Smith*, and so the lord was not disabled to perform the covenant.

*Release.*

Release is no bar before the covenant is broken, viz. generally. 4 *Rep.* 71. 5 *Eliz.* *Dyer* 217. *pl.* 2. 1 *Rep.* 99. *a.* If

## Damages.

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If it be not by express words, 5 *Rep.* 71. *a.* 35  
H. 8. *Dyer* 157. *pl.* 24. *Bramly*; for so the cove-  
nant may be released.

## Damages.

**T**HE party shall recover costs where he reco-  
vers damages. *Stat. 6 E. 1. c. 1.*

Upon demurrer adjudged insufficient, or verdict  
upon any issue for plaintiff or demandant, where  
the defendant or tenant, or plaintiff in replevin, has  
pleaded several matters by leave of court, costs to  
be given, unless the judge who tried the issue cer-  
tifies, that they had a probable cause to plead such  
matter. *Stat. 4 & 5 A. c. 16. § 4, 5.*

In actions personal (not being for title or interest  
of lands, nor concerning the freehold or inheritance  
of lands, nor for battery) if the judge don't certify  
that the debt or damages amount to 40*s.* the plain-  
tiff to have no more costs than the debt or damages,  
but less at the judges discretions. *Stat. 43 Eliz.*  
*c. 6. § 2.*

In slander, if the jury assess the damages under  
40*s.* the plaintiff to have no more costs than da-  
mages. *Stat. 21 J. 1. c. 16. § 6.*

Costs *de incremento* not to be allowed in slander,  
though defendant plead a special justification. *Rep.*  
*& Ca. in Pract. 22.*

In an action for words and special damages  
found, full costs allowed. *Ibid.* 137.

In all actions of trespass, assault and battery, and  
other personal actions, wherein the judge at the  
trial shall not find and certify under his hand upon  
the back of the record, that an assault and battery  
was sufficiently proved, or that the freehold or title  
of the land mentioned in the declaration was chiefly  
in question, the plaintiff, if the jury find the da-  
mages to be under 40*s.* shall not recover more costs  
than damages; and if more costs be awarded, the  
judgment shall be void, and the defendant may  
have his action against the plaintiff for such vexa-  
tious suit in any of the courts at *Westminster*. *Stat.*  
22 & 23 C. 2. c. 9. § 136. *The*

## Damages.

*The opinion of the twelve judges upon the above clause, delivered at Serjeants Inn in Trinity Term 23 Car. 2.*

1. Actions of debt are not within the above clause.

2. Nor actions upon the case *sur assumpsit*, nor other personal actions, except for assault and battery, or voluntary trespasss, where the title comes not in question.

3. The judge is bound to certify in assault and battery, where the jury finds damages to 10*s.* or less, that the battery is sufficiently proved, otherwise the plaintiff to have no more costs than damages.

4. If defendant pleads *son assault demesne*, and the jury find it *ad damnum querentis*, the certificate must be, that the jury find by the defendant's plea, that the battery is admitted and sufficiently proved.

5. If an assault be proved, and no battery, there needs no certificate.

6. The certificate (where requisite) must be indorsed on the panel with the judge's hand to it, immediately after the trial, and it is to be that the battery is fully proved.

7. The clause extends only where damages are to be recovered, and not in debt.

8. In actions for a common, a way, a nuisance, lights, water courses, &c. the judges may certify, because the freehold may come in question, tho' it be not mentioned in the declaration.

9. The clause extends not to judgments by default, or writs of inquiry of damages.

The clause 22 & 23 C. 2. c. 9. § 136. (*antea*) and all provisions by any law in force for preventing frivolous and vexatious suits in the courts at *Westminster*, to extend to such suits in the great sessions of *Wales*, the great sessions in *Cheshire*, the Common Pleas in *Lancashire*, and the court of pleas in *Durham*. Stat. 11 & 12 W. 3. c. 9. § 1.

In trespasss, if it appeared at the trial, and be certified by the judge, that the trespass was wilful and malicious, the plaintiff shall recover full costs. Stat. 8 & 9 W. 3. c. 11. § 4. If

## Damages.

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If defendant or tenant, or any other bound by judgment, sue before execution, any writ of error in delay of execution; if the judgment be affirmed, or writ of error be discontinued in default of the party, or the person that sues the writ of error be nonsuited, the person against whom the writ of error is sued, shall recover costs and damages for his delay, at the discretion of the justice before whom the writ of error is sued. *Stat. 3 H. 7. c. 10. 19 H. 7. c. 20.*

In trespass for breaking and opening doors, and breaking and spoiling locks and bolts, and for beating and wounding the plaintiff, no costs *de incremento* to be allowed, because it is a trespass against the freehold, and an assault and battery joined, and the judge had not certified. *Rep. & Ca. Prac. 24.*

In trespass for an injury done to a personal chattel, where no freehold can come in question, the plaintiff to have full costs, tho' the damages found be under 40*s.* and there is no occasion for the judge to certify. *Ibid. p. 24, 49, 99.*

But where the freehold might come in question, a judge's certificate is necessary, to intitle the plaintiff to full costs. *Ibid. 86.*

In trespass the jury gave 3*s.* 4*d.* damages, and 40*s.* costs, and the prothonotary allowed 6*s.* 8*d.* for the *capiatur* fine; the jury is not bound by the statute, and the prothonotary, by 5 & 6 *W. & M. c. 12.* is to allow the plaintiff the *capiatur* fine in increase of costs. *Ibid. 44.*

In trespass for an assault, and tearing and spoiling the plaintiff's clothes with which he was then clothed, a verdict for plaintiff, 1*d.* damages, and 40*s.* costs given by the jury, he shall have full costs, tho' no certificate was given by the judge, for it is not an action of assault and battery within the *stat. 22 & 23 Car. 2. c. 2.* for the tearing and spoiling the plaintiff's clothes, which is joined with it, is founded on an injury to his property, and the verdict is general for the plaintiff. *Ibid. 108.*

In trespass *quare clausum fregit*, and for breaking a door, the plaintiff laid special damage in the declara-



declaration; the special matter was found for the defendant, and the rest for the plaintiff, and damages 5 s. plaintiff to have no more costs than damage, because the special matter was found for the defendant, and the rest of the trespass was against the freehold, of which a certificate was necessary. *Ibid.* 117.

## Debt.

(A) *In what court it lies.*

**I**N the county court. *Nat. Br.* 119. g. *Reg. Orig.* 139. a.

In *Pyepowders*, but by the 17 *Edw.* 4. cap. 2. the plaintiff or his attorney, ought to swear it was in the fair, and within the jurisdiction, *Stat.* 1 *Rich.* 3. c. 6. and if he refuse, the defendant shall go quit by the statute; for it appears not that the court had jurisdiction to hold plea.

In *Chancery*, for a person privileged debt lies, for the *Chancery* to some purposes is a court of law as well as of equity.

In the *Exchequer*, by *quo minus*, 8 *Rep.* 68. a. but then the plaintiff must make himself an accountant to the king.

In *Com. Ban.* *Nat. Br.* 119. g.

Debt lies not for a popular action, or upon a penal law, but in one of the four courts of records at *Westminster*, per *statut.* 18 *Eliz.* cap. 5. 6 *Rep.* for those courts are fittest to interpret statutes, and not inferior courts.

(B) *Who shall have it.*

*Husband.*

**A.** Is bound to the husband and wife, the husband alone shall have the action, 3 *Hen.* 6. 37. pl. 35. 12 *Rich.* 2. *Bre.* 637. in his own name only if he will.

Or in both their names, 39 *Edw.* 3. 5. pl. 19. 43 *Edw.* 3. 10 pl. 31. 3 *Hen.* 6. 37. pl. 35. 12 *Rich.* 2. *Bre.* 639. 16 *Edw.* 4. 8. for the husband may interest his wife in the debt.

Husband

Husband and wife assign auditors to receive a debt due to the wife *dum sola fuit*; and brought debt for the arrearages in both their names, and good; because the wife was the cause of the action, 16 *Edw.* 4. 8. *pl.* 4. because the debt was due to her *dum sola*.

Husband and wife lease for years lands of the wife, rendering rent, the husband dies and the second husband brought debt, and good, 28 *Edw.* 3. 90. *pl.* 4. for the law creates a privity in him.

A woman leases at will rendering rent, and takes a husband, the rent is behind, they join in debt, and good, 5 *Rep.* 10. for the marriage shall not determine her will so as to extinguish the debt.

A woman shall not have an action against her husband, although she is executrix, 8 *Edw.* 3. 330. *pl.* 48. for she cannot sue herself, and the husband and wife are but one person in law.

A is bound to the husband and wife, and they are divorced *causa præ-contractus*, and they brought debt in both their names, *No. Lib. Intra.* 121. *scilicet.* 5. for the divorce makes the marriage void *ab initio*, and so the obligation is void, and therefore the action seems not well brought.

B. had a rectory in right of his wife for years, and they both joined in debt upon the statute of 2 *Edw.* 6. for not setting forth of tithes, *Hill.* 39 *Eliz. B. R. Rot.* 699. and good; for the action is grounded by reason of the wife.

Lease for years rendering rent by the husband and wife, husband may have debt in his own name, 7 *Edw.* 4. 5. *pl.* 16. for the rent belongs to him.

The same law is, if the reversion be assigned to the husband and wife, altho' the husband count as assignee, *Trin.* 19 *Jac. B. R. Wyat's case.* *Quare,* Whether in both cases the action may not be brought in both their names.

Husband and wife sold the land of the wife, the husband alone shall have debt, 48 *Edw.* 3. 18. *pl.* 4. for the money only belongs to him.

Husband and wife recover damages, the husband alone shall have debt for them, 16 *Hen. 6. Br.* 939. for the husband shall have them.

A woman tenant in dower of rent takes a husband and dies, the husband shall have debt for the arrearages during the coverture, *Nat. B. R.* 121. *c.* 14 *Hen. 6. 26. a.* 10 *Hen. 6. 11.* 22 *Hen. 6. 25.* 26 *Edw. 3. 64.* for the rent was due to him.

And by 32 *Hen. 8. cap. 37.* the husband shall have debt for the arrearages before the coverture, 5 *Rep. 5. a.* else the rent would be lost.

Annuity to the wife that takes a husband, arrearages incur, the wife dies, the husband shall have debt, because it is more than a thing in action, *Hill. 29 Eliz. C. B. St. Legers*, for it is a duty incurred.

But if it be but for a thing in action before the coverture, as an obligation, the husband shall not have it, *Nat. Br.* 121. *c.* 39 *Hen. 6. 26. pl. 38.* because of the incertainty, whether it were due to the wife, or not.

But during the coverture the husband may release it, 17 *Edw. 3. 66. pl. 78. Hill.* for that passeth nothing but by way of extinguishment of his right, if he have any.

Husband makes his wife executrix, which takes a husband, and makes him executor, and dies; the husband brought debt for the debt to the former husband, and good, 4 *Hen. 6. 31.* for now it is become due to him as executor of an executor.

*Clerk of  
the peace.*

It lies in the name of the clerk of the peace for the hundred against the village, where default is made in hue and cry, by 27 *Eliz. cap. 13.* because thereby the hundred becomes liable to pay the money robbed.

Debt lies by a conusee of a statute or recognizance, *Nat. Br.* 122. *d.* 11 *Hen. 6. 49 pl. 7.* 36 *Hen. 6. 2. pl. 2.* 39 *Hen. 6. 3. pl. 5.* 22 *Eliz. Dyer* 369. *pl. 52.* 13 *Rich. 2. Breve* 649. upon the statute or recognizance.

Executor

Executor shall have debt for a debt due to the testator, 11 *Hen.* 6. 7. for he is in place of the testator. *Executor.*

Executor of an executor shall have debt, 25 *Edw.* 3. c. 5. & *sic in infinitum*, as it seems.

Executor shall not have debt before *probat* of the testament, 7 *Hen.* 4. 18. 5 *Rep.* 28. a. *Com.* 278. *Perkins* 193. for before that he is not executor in the eye of the law.

But if (*pendente brevi*) the testament be proved, it sufficeth, *Pasch.* 43 *Eliz.* C. B. for that relates to the death of the testator, and so includes the time of action.

Rent services granted to the husband and wife for life, the husband dies, the wife shall have the arrears that did accrue in the life of the husband, and debt for them after the estate ended, 29 *Edw.* 3. 40. pl. 19. for here is a surviving estate in the wife. *Feme.*

Grantee of a reversion shall not have debt for rent upon a lease for years before attornment, *Nat. Br.* 121. n. for before attornment the reversion passed not. *Grantee of a reversion.*

But a devisee shall have it, *Nat. Br.* 121. n. *Mich.* 14 *Jac.* B. R. Bailiffs and burgeses case of *Ipswich*; for there it passeth by the will.

So bargainee shall have it, 3 *Rep.* 24. a. for it passeth by inrollment of the deed.

A. is bound to B. and his heirs, B. dies, his heirs shall not have debt, *Nat. B. R.* 120. i. but the executors; but contrary where A. binds himself and his heirs to B.

But if a penalty be granted to one and his heirs, then the heir shall have debt, *Nat. Br.* 120. m. 11 *Hen.* 4. 84. 28 *Hen.* 8. *Dyer* 24. pl. 149. for that is a present duty wherein the heir hath interest.

Custom, that the heir shall have principal chattels, &c. he shall have debt for them. 30 *Edw.* 3. 2. pl. 9. 39 *Edw.* 3. 6. pl. 24. & fol. 9. pl. 15.



*Lessor.*

Lessor shall have debt for rent reserved upon a lease at will, 5 *Rep.* 10, 15. by reason of the privacy of the contract betwixt the lessor and the lessee.

And so for a lease for years. 7 *Rich.* 2.

Tenants in common make a lease rendering rent, they ought to join, *Lit.* 72. in the action, in respect of their joining in the lease, and so a joint interest passed.

*Ordinary.*

The ordinary shall not have debt, because he hath not absolute interest in the things of the intestate, 9 *Rep.* 33. *Nat. Br.* 120. *d.* but hath it only to derive it to others to whom the law directs.

*Parson.*

A parson shall have debt for not setting out of tithes, by the *stat.* 2 *Edw.* 6. *cap.* 13. and recover treble damages.

*Physician.*

A physician shall have debt for physick and diet, *Lib. Intra.* 187. *b. sect.* 1. upon a *quantum meruit*, if there be no special contract.

*Robbery.*

The party robbed shall have an action against the hundred, *per stat.* 27 *Eliz.* *cap.* 13.

But he ought to bring his action within the year after the robbery done. *Ibid.*

*Steward.*

Steward of a court retained by word for such a sum *per annum*, shall have debt for his salary. 8 *Eliz.* *Dyer* 248 *pl.* 79. 4 *Rep.* 30. *a.*

*Servant.*

Servant shall have debt for his salary, 11 *Hen.* 6. 10 *pl.* 20. upon the contract which created a duty.

One retained in *England* to do service beyond the sea, shall have debt in *England* where the retainer was, *Nat. Br.* 120. *e.* and not where the service is done, because it is beyond the sea; *aliter quære.*

Servant retained by a corporation without deed, shall not have debt for his salary, 4 *Hen.* 7. 6. *Com.* 91. *b.* for such a retainer is null in law, and the servant could not have been compelled to serve.

*Succession.*

One sole corporation shall not have a personal thing in succession, 4 *Rep.* 65. *a.* 19 *Hen.* 6. 44.

pl. 92. 20 *Edw.* 4. 2. for personal things cease with the person.

Unless the custom will warrant it. 4 *Rep.* 65. a.

But a corporation aggregate shall have an action for a personal thing in succession. 4 *Rep.* 65. a. 20 *Edw.* 4. 2.

If I sell a horse, and earnest is given, or day set, I shall have debt for the money, 14 *Hen.* 8. 19. *Br. Contract* 15. 3 *Rep.* 22. a. and the losing of the earnest will not avoid the contract, as the vulgar opinion is.

If I sell a manor, debt lieth for the money, and yet the vendee cannot enter before livery, 37 *Hen.* 6. 8. pl. 18. upon the contract, for the vendee may force him to make livery. *Vendor.*

The sheriff shall have debt for his fees, *Trin.* 14 *Sheriff.* *Jac. B. R. per stat.* 28 *Eliz. cap.* 14. for the law creates the duty, when he hath performed his office.

If A. gives money to B. to carry to C. yet C. shall have debt, count, *Lib. Intra.* 159. *sect.* 1. for the delivery was for his benefit. *Use.*

Outlawed persons shall not have debt, 16 *Edw.* 44. 7 *Hen.* 4. 1. pl. 6. nor other action; for he that will not obey the law, ought not to receive benefit by it.

### (C) Against whom it lies.

If accountant be found in arrearages, debt lies against him; for here is a duty created by adjudging him in arrear. *Accountant.*

Debt at the common law lay against the committees of the ordinary; but this was by the name of executors, and only for goods which came to their possession. 58 *Edw.* 3. 26. 42 *Edw.* 3. 2. 9 *Rep.* 39. b. *Admini- strator.*

But by *stat.* 31 *Edw.* 3. c. 11. they are chargeable by the name of administrators, in the same manner as executors are, 38 *Edw.* 3. 2. pl. 3. 41 *Edw.* 3. 2. 9 *Rep.* 39. *viz.* by shewing how.

If an administrator waste the goods, and after the administration is dissolved and granted to another, debt lies against the former, 6 *Rep.* 18 & 19. for at the time of the wasting he was administrator, and chargeable.

*Assign.*

Termor assigns his term to another, the lessor shall have debt against the assignee, 3 *Rep.* 25. *b.* for by the assignment here is a privity created.

*Joint-tenant.*

If there be two joint-tenants of a term, the one assigns to B. the other dies, debt lies for the rent against the assignee, and the executor of the dead, for rent after his death by survivor; for it shall be mischievous to compel the lessor to bring several actions for one thing. *Mich.* 14 *Jac. B. R. Bailiffs and Burgeffes de Ipswich's case.*

*Attorney.*

If an attorney suffer another to follow any matter in his name, he forfeits 20 *l.* and the party grieved shall have debt, *per stat.* 3 *Jac. cap.* 7.

*Husband.*

If the husband give authority to his wife to make a contract, he shall be charged by the contract made by her; otherwise not, *Nat. Br.* 120. *g.* for such authority makes it his own contract.

Unless it be for apparel convenient for his wife, 11 *Hen.* 6. 30. *b.* for that he is chargeable, though he gave her no authority to contract for it.

But unless it be convenient, he shall not, 7 *Eliz. Dyer* 234. *pl.* 17. that is, apparel necessary and fitting for her degree to wear.

The husband alone shall be charged for arrearages of the rent service in arrear in his time, *Nat. Br.* 121. *c.* *Croke* 125. *pl.* 83. for the land of his wife after her death.

And so of a rent-charge, 4 *Rep.* 49. *b.* 26 *Edw.* 3. 64. issuing out of his wife's land.

But for an obligation made by the wife before coverture, he shall not be charged after the death of the wife, *Nat. Br.* 121. *c.* 120. *f.* 49 *Edw.* 3. 25. *b.* 20 *Hen.* 6. 22. for that is but a thing in action.

Unless recovery be had upon it during the life of the wife, *Nat. Br.* 121. *c.* for by the recovery it becomes a duty.

A woman covert being a sole merchant, may be sued in *London*, by the custom of the city without the husband; but not in *C. B.* 9 *Edw.* 4. 3. because that law extends not out of the city.

If *A.* and his wife covert, by the name of his wife sole, are obliged, it lies not against the wife, because it is a void obligation as to the wife. 14 *Hen.* 4. 30. *pl.* 39.

Husband and wife are bound, the husband alone shall be sued, because it is void against the wife, 43 *Edw.* 3. 10. *pl.* 31. 45 *Edw.* 3. 11. *pl.* 7. 3 *Hen.* 4. 1. *pl.* 4. but good as to the husband.

Debt lies against the husband and wife for rent upon a lease made to the husband and wife, 45 *Edw.* 3. 11. *pl.* 7. in respect of the interest the wife may have in the term. *Husband and wife.*

So if it be covenanted or agreed that they double the rent, 45 *Edw.* 3. 11. *pl.* 7. for this, as it were a new rent reserved.

When a woman in debt takes a husband they both shall be sued, 5 *Rep.* 36. *a.* 12 *Hen.* 4. *pl.* 1. *Nat. Br.* 120. *f.* for the marriage makes it both their deeds.

Debt lies against a conusor of statute merchant, staple, or recognizance, *Nat. Br.* 122. *d.* 11 *Hen.* 6. 49 *pl.* 7. 3 *Rep.* 15. 36 *Hen.* 6. 2. *pl.* 2. 22 *Eliz.* *Dyer* 369. *pl.* 52. 39 *Hen.* 6. 3. *pl.* 5. for here is a duty. *Conusor.*

Debt lies against an infant for tabling and apparel, 18 *Edw.* 4. 3. *a.* for these are necessary for the support of the infant. *Infant.*

For rent upon a lease for years, 21 *Hen.* 6. 31. *b.* upon the words *Yielding and Paying*, which make it a duty.

For an escape, if he be a gaoler, *Doct. & Stud.* 147. *b.* for the sum for which the prisoner was committed to him.

For a thing due to one as executor. 5 *Rep.* 27. *b.*

Debt lies against an executor although he be not bound, 45 *Edw.* 3. 17. *pl.* 4. because he is in *Executor.*



place of the testator, who was bound, and hath the estate chargeable.

Debt lies against executors of the ordinary, which will not deliver the administration to another, *Nat. Br. 120. d. Com. 280. a.* to whom they belong.

Debt lies against an executor of an heir, *Lib. Intra. 172. c. f. & 4. 18 Eliz. Dyer 344. pl. 1.* where the heir is bound.

Against an executor of a sheriff, for not returning a knight of the parliament duly elected, 23 *Hen. 6. cap. 15.* for damages are to be recovered, with which the executor is chargeable, if he have assets.

Debt against an executor of his own wrong, 5 *Rep. 30, 33, 34.* for he hath made himself liable by meddling with the estate, which was chargeable.

Debt lies against an heir upon the obligation of his father, if he hath assets by descent, and be bound, *Nat. Br. 120. c. & i.* otherwise not.

But if he alien the assets before the action brought, he shall not be charged, 5 *Rep. 60. a. Regist. Orig. 140. a. 27 Edw. 3. 7. b. 10 Hen. 4. pl. 14. 19 Hen. 6. 46. pl. 95. 42 Edw. 3. 10. pl. 12. 48 Edw. 3. 32. pl. 22.* for it was the laches of the party that brought his action no sooner.

Unless it be fraudulent to deceive creditors. 5 *Rep. 60.*

And if they be heirs in gavel-kind, they shall all be charged as one heir. 7 *Eliz. 239. pl. 34. Dyer, Vid. the count, Lib. Intra. 290. d. 11 Edw. 3. Debt 7.*

But if all alien but the eldest, he shall be charged sole, for he is chargeable in respect of his assets.

The count against an heir. *Lib. Intra. 172. b. f. & 1. No. Lib. 126. b.*

The count needs not shew that he hath assets, for it shall be intended unless the contrary be shewed, 18 *Eliz. Dyer 344. pl. 2. 11 Hen. 6. 2. pl. 6. and*

6. and if he have not, he may plead *riens per descent*.

For nothing by descent in fee-simple is a good bar by him, *Lib. Intra. 172. b. sect. 1.* the day of the purchase of the writ.

But debt lies not against an heir upon a statute merchant, staple or recognizance, because he is not bound, *3 Rep. 15. a.* but the lands are bound, and may be extended.

Gaoler suffers an escape, his heir shall not be charged, *15 Eliz. Dyer 322. pl. 25.* for this is a personal wrong, and only damages recoverable.

Grandfather, father, and son, or father and his two sons, or grandfather's two sons, who have two sons, the heir mediate shall be sued in debt as well as if they were immediate heirs, *22 Dyer 368. pl. 14. 7 Eliz. Dyer 239. pl. 39.* that is, in case the heir immediate dies, for the heir mediate is bound by the word *heir*.

If one be robbed, he shall have debt against the *Hundred*. hundred, *per 27 Eliz. cap. 13.*

Debt lies against a lessee at will for rent during *Lessee*. the term *5 Rep. 10. Quere*, If he hold over.

So against a lessee for years. *Nat. Br. 120. b.*

And this during the term. *4 Rep.*

Or after the term ended by effluxion of time, *3 Rep. 23. b.* for rent due during the term.

It lies not against tenant for life so long as his *Life*. estate continues, *4 Rep. 49. a. 11 Hen. 6. 14. pl. 4. viz.* for rent, for the land is charged.

But yet by *32 Hen. 8. cap. 37.* the executors of a lessor for life shall have debt during the estate for life, *4 Rep.* which seems but reasonable.

Debt lies not against the master upon the buying *Master*. of the servant, unless it comes to his use or by his assent, *Deft. & Stud. 137. a.* for otherwise it might be mischievous to the master.

Debt lies against an ordinary when a man dies *Ordinary*. intestate, *Nat. Br. 120. d. 5 Rep. 83. a. 9 Rep. 39. b. 11 Hen. 7. 12. 9 Edw. 4. 33. 18 Hen. 6. 23. Com. 277. 8 Eliz. Dyer 247.* if the goods come into the hands of the ordinary.

The ordinary administers, and then grants administration, yet debt lies against the ordinary; but it was said, that such administration ought to be alledged in the diocese of the ordinary, 12 *Rich. 2. Administrator* 21. else it might be prejudicial to the creditors.

But no debt lies against the ordinary after that he hath committed administration to another, 8 *Eliz. Dyer* 247. *pl. 73. viz.* where he never administers.

*Receiver.*

Debt lies against a receiver, which takes more than he ought, *per 7 Edw. 6. cap. 6. Lib. Intra. 191. b. sect. 1. Com. 201.* for that shall be accounted as money borrowed only.

*Sheriff,  
Under-  
sheriff.*

Debt upon an escape of one in execution upon an account, it lies *per Westm. 2. cap. 11.* and as of the debtor, *per 1 Rich. 2. cap. 12.*

For not returning a knight of the parliament, *per 23 Hen. 6. cap. 15. the count, Com. 118. Lib. Intra. 186. a. sect. 1.*

A sheriff takes an obligation for appearance of the defendant, which doth not appear; yet debt lies not against the sheriff by the plaintiff, *Trin. 13 Jac. C. B.* if he return a *cepi*; but an action on the case lies, and the sheriff may bring his action upon the bond.

*Outlawed  
person.*

It lies against a person outlawed, *Mich. 38 & 39 Eliz. C. B. No. Intr. 248. a. 7 Hen. 6. 10.* for another debt, or in another action.

#### (D) *For what things it lies.*

*Lent.*

**F**OR money lent to another, *Nat. Br. 119. g.* this most properly.

For a horse lent till such a day, and then to give 10*l* for him, or the horse: After the day debt lies for the one or the other, *Nat. Br. 121. b.* at the election of the plaintiff; but before the day or at it, it was in the defendant's election.

*Bailment.*

Upon a delivery to redeliver, if it be not redelivered, 28 *Hen. 8. Dyer* 22. *pl. 135. 11 Hen. 6. 39. pl. 31. 4 Edw. 3. 9. pl. 7.* although the receipt be not by deed.

Upon

Upon a delivery to redeliver one to another, if it be not performed, 28 Hen. 8. *Dyer* 22. pl. 135. 11 Hen. 6. 39. pl. 31. 42 Edw. 3. 9. pl. 7. Mich. 40, 41 Eliz. C. B.

But 6 Hen. 4. 8. pl. 32. if *A.* ought to pay an annuity in fee to *B.* and delivers money to *C.* to pay it to *B.* yet *B.* shall not have debt against *C.* for there is no trust of privity between them.

Lease for life of another, it lies not for the rent *Contract.* during the term, 4 Rep. 49. a. it lies by *Cessuy que vie.*

But by *stat.* 32 Hen. 8. cap. 37. the executors or administrators shall have it during the estate for life. 4 Rep. 49. a.

But after the estate ended it lies, 4 Rep. 49. a. for then there is no other remedy.

So it is by the death of the lessee, 4 Rep. 49. a.

Lease for years by a bailiff, the master shall have debt for the rent. *Lib. Intr.* 174. d. sect. 3.

A corporation made a lease for years rendering to *P.* 10 l. at Mich. or 20 days after; after verdict it was moved in arrest of judgment, that they shewed not the deed; *sed non allocatur*, because it was after verdict, and so the lease was found; 2. Good, although they had brought debt for the rent due for 6 years ended at Michaelmas to *P.* and not 20 days after, for the rent was due at Michaelmas. Mich. 9 Jac. B. R.

Bargainee of a reversion, in debt for rent, ought to shew in what court the deed was enrolled, Mich. 9 Jac. B. R. *Welby & Purley*, by which the reversion was granted; for the enrollment is traversable, and must be punctually set forth, and the enrollment may be in divers places, for that the debt cannot take notice where.

Debt lies for the agistment of cattle for so long *Agistment.* time as they went in such lands, *Lib. Intra.* 150. a. sect. 1. count, *Lib. Intra.* 151. a. sect. 1. but then he must shew the certainty of the time and sum.

Upon partition betwixt two, one promiseth the *Partition.* other 20 l. for equality of partition, debt lies for



it, *Nat. Br.* 122. *b.* 14 *Edw.* 3. *Debt* 133. if it be not paid, for the promise upon the partition made is a duty.

*Rent upon  
a personal  
thing.*

If a personal thing be leased, rendering rent, debt lies for it, 3 *Rep.* 22. *a.* as a horse, sheep, or the like, the loan implies a duty upon the contract.

*Servant.*

A servant shall have debt for his salary, 9 *Rep.* 87. 3 *Hen.* 6. 42. 11 *Hen.* 6. 48. although it be to do his service beyond the sea, *Nat. Br.* 120. *e.*

*Steward.*

Steward of a court retained by word shall have debt, 8 *Eliz.* *Dyer* 248. *pl.* 79. 4 *Rep.* 30. *a.* for his salary.

*Vendition.*

I bargain for a horse, debt lies for the money, 4 *Rep.* 94. *b.*

If a man makes an obligation for a debt due by contract, debt lies not upon the contract. *Nat. Br.* 121. *m.* 6 *Rep.* but upon the obligation; for by the taking of it the contract is gone.

Because the obligation drowns the contract, for the obligation is of a higher nature.

*Servant.*

If I give authority to my bailiff or servant to buy for me, debt lies against me, *Nat. Br.* 120. *g.* *Doct. & Stud.* 137. *a.* otherwise not.

And so if he bought it without command, if it come to the use of the master by his assent. *Doct. & Stud.* 137. *a.*

And likewise if he bought it in his own name, and it comes to the use of the master, it lies against his master. *Ibid.*

So if the bailiff which used to sell, sold a horse for twelve bushels of wheat, this is good, and the master shall have debt, 27 *Affize*, *pl.* 5. for it is accounted the master's sale.

The servant sells, the master agrees, this is the sale of the master, and debt lies, 27 *Hen.* 8. 25. *b.* otherwise not, except he used to sell; for it is not incident to a servant, as a servant only, to buy or sell for his master.

A factor receives money, and gives a bill of exchange, if the master accepts the bill, by it he becomes debtor by the custom of merchants, *Trin.* 43 *Eliz.* *C. B. per legem mercatoriam*, and for the advancement of trade. The

The wife buys a thing, the husband agrees, this *Wife.* is the emption of the husband, 27 *Hen.* 8. 25. *b.* but if he assent not, he is not bound, for she is no more than a servant in this respect.

If a prisoner escape by assent, although the sheriff take him again, yet debt lies. 3 *Rep.* 44.

Unless the sheriff brought one *per Habeas Corpus*, then if he had him at the day it sufficeth. 3 *Rep.* 44.

Unless the party be in execution, 5 *Rep.* 89. *Frost's case*, 7 *Hen.* 4. 30. for then debt lies against him; but if it be put upon mean process, an action of the case only lies to recover what the party is damnified.

Or upon a *Ca. Sa.* although the writ be not returned, 3 *Rep.* 52. if the party be taken upon it, for then he is in custody.

And if it be returned, and he had not the body, debt lies, 7 *Hen.* 4. 11. *Br. Return* 107. for it shall be intended that he let him escape.

If one be taken by a *Capias utlagat.* after the year, and escape, debt lies. 5 *Rep.* 89. *Negligence escape per sheriff.*

The ancient sheriff makes no mention of one in execution in his indenture delivered to the new sheriff, of prisoners in his custody; this is an escape in the old sheriff, but not in the new; for the new is not charged with him; but if the old sheriff die, the other ought to take notice of the prisoners; but if the escape be in the vacancy, *viz.* before the new sheriff is elected and sworn, debt lies not, 3 *Rep.* 71, & 72. 10 *Edw.* 3. 375. *pl.* 28. for before he was not chargeable, for he was no officer in law.

A *Capias* upon a recognizante in *Chancery*, the party taken escapes, debt lies, 8 *Rep.* 142. for this is in nature of an execution.

If one be marshal of the prison, whether it be *Marshal.* by right or wrong, debt lies against him, 39 *Hen.* 6. 33. *a.* for the plaintiff is not to examine his title.

Count that he was in execution in *C.* and removed to the Upper Bench prison, and committed to the marshal, who suffers him to escape, debt lies,

38 Hen. 6. 28. pl. 10. for it is all one as if he had been originally committed thither.

*Deputy.*

Deputy of a marshal suffers an escape, debt lies against him, 11 Eliz. Dyer 278. pl. 5. viz. the marshal himself. 2. If not the deputy.

*Annuity.*

It lies for executors or administrators of the grantee, *per stat.* 32 Hen. 8. cap. 37. viz. of an annuity or rent-charge.

And after the term ended, it lies for the grantee, *Lib. Intra.* 151. c. scd. 1. for then there is no other remedy for it.

*For life.*

Annuity for life, debt lies not for this during life, 19 Hen. 6. 42. a. 37 Hen. 6. 35. a. but a distress or a writ of annuity, and the land is chargeable.

Also if a parson or prebendary, &c. hath such annuity, and resign or be dispossessed, it lies for the arrearages. 4 Rep. 48. b.

For by his resignation it is merely a personal thing, and the land is not chargeable.

So his executors shall have debt by the common law, 4 Rep. 49. a. 10 Rep. 61. b. for it is accounted part of the testator's personal estate.

But if it be a rent charge, seck or service, debt lies not for any so long as the estate continues, 4 Rep. 49. a. for there the person is not chargeable.

Although it have continuance but to a special intent, 7 Rep. 39. b. for the law takes not notice of such intent, but looks on it as upon a continuing estate.

But after it be determined, it lies for the party or his executor, 4 Rep. 49. Nat. Br. 121. c. 4 Rep. 49. 27 Hen. 6. 1. pl. 4. because the realty is resolved in the personalty, and so the person chargeable.

Annuity in tail general or special, debt lies not during the annuity. 4 Rep. 48. b.

So of a rent seck, service or charge.

*Annuity or  
rent in  
fee.*

Annuity in fee during the annuity, debt lies not. 4 Rep. 48. b. 6 Hen. 4. 7. pl. 33.

Unless it be in a special case, as when a parson or prebend resigns, 4 Rep. 49. a. Nat. Br. 121.

d.

d. 19 Hen. 6. 41. & 42. Nat. Br. 121. b. antea, for there the estate is determined as to him that resigns.

So if a parson dies, his executors shall have debt, Nat. Br. 120. l. 4 Rep. 49. a. 37 Hen. 6. 8. pl. 18. for there is no other remedy to recover it.

And by stat. 32 Hen. 8. cap. 37. the executors or administrators of every one shall have debt.

But after the annuity determined every one shall have debt by the common law. 4 Rep. 49. a. 45 Edw. 3. 45. Execution 71.

If a man brings debt upon a recovery in C. B. he ought to bring it in *Middlesex*, where the record is, because it is the original, upon the which the action is brought; but a *scire facias* to execute a judgment shall be where the original action was brought, because it ought to follow it, *Hill. 9 Jac. B. R. Musgrave versus Wharton*; for the *scire facias* is in pursuance of it, and to have execution upon it.

Judgment  
given in  
debt for  
the principal.

Upon arrearages recovered in a *scire facias* upon a judgment in annuity brought against the predecessors, debt lies upon it, Nat. Br. 122. e. 22 Edw. 4. 1. pl. 6. for by the recovery it is become a duty.

A debt was recovered in a court of pye-powders, and debt brought upon it in C. B. *super tenorem recordi*, and good, 7 Hen. 6. 19. the record must be mentioned in the count.

If a man recover damages in waste, he shall have an action of debt for the damages, Nat. Br. 122. c. 43 Edw. 3. 2. pl. 5. the count, *Lib. Intra. 197. c. f. 15.* for the recovery of them hath made them a duty.

For damages and costs.

If the plaintiff in C. B. is nonsuited, and the record removed by writ of error before the costs paid upon the nonsuit, the defendant in the writ of error shall have debt for his costs, 29 Hen. 8. *Dyer* 32. pl. 5. for the law makes them a duty.

Damages recovered in antient demesne, and the tenour of the record was removed by *certiorari*, debt lies upon it for damage, 39 Hen. 6. 3. pl. 5. count,



count, *Lib. Intra.* 195. c. *sect.* 11. for they are become a duty.

Damages recovered before the mayor of *Hull*, debt lies there, 11 *Hen.* 4. 12. but not in another court.

*Account at  
the com-  
mon law.*

Debt lies upon arrearages of account at the common law, the count, *Lib. Intra.* 149. a. *sect.* 1.

Also a bailiff shall have debt upon the surplufage of account, *Nat. Br.* 121. i. 38 *Hen.* 6. 5. 19 *Edw.* 2. Debt 176. against his master, for the law makes it a duty in the master.

He ought to count the place and day where the auditors were assigned, *Hill.* 32 *Eliz.* C. B. before whom accounted, and the account stated; for they are traverfable.

But if the lord will not hear his account, he hath no remedy for the surplufage, 7 *Edw.* 3. 12. for then it appears not whether any thing be due to him or not.

But it lies not by a receiver, 38 *Hen.* 6. 5. *pl.* 14. *Mich.* 12 *Jac.* B. R. for a receiver is not to lay out for his master.

But a receiver for merchandize shall have it, 38 *Hen.* 6. 5. because he receives for to be employed, and the master is to stand to the gain and loss, if there be any.

*Arbitra-  
ment.*

Debt lies upon an arbitrament, *Nat. B. R.* 121. g. 9 *Rep.* 92. b. the count, *Lib. Intra.* 153. c. *sect.* 1. for an arbitrament is a judgment by consent of both parties, and by it a duty is created.

*By laws  
or ordi-  
nances.*

Debt lies upon an ordinance or by-law. 5 *Rep.* 64. a.

A pain is laid upon one in a leet to reform a nuisance, and afterwards it is presented that it is not done, the lord shall have debt, 23 *Hen.* 8. *Br. Leet* 37. for the same, for it is a duty conditionally upon the nonfeasors.

For a penalty inflicted upon one in *London* per the common council, debt lies for it in B. R. *Mich.* 9 *Jac.* B. R. by the custom of the city.

Debt lies *pro rationabili parte bonorum*, where the custom gives such part, *Nat. Br.* 122. l. 3 *Edw.* 3. Debt 156. for him that is to have such part. *Pro rationabili parte bonorum.*

But shall not have this writ, but where such custom is. 40 *Edw.* 3. 38. pl. 13. 7 *Edw.* 4. 20. pl. 23.

Executor shall have debt for relief, because it is but an improvement of a rent-service, 4 *Rep.* 49. b. 34 *Edw.* 1. *Avowry* 233. 11 *Hen.* 6. 15. pl. 4. and is not a rent-service. *For relief per executor.*

And it is a chattel to the executor. 34 *Edw.* 3. *Avowry* 233. and ought to be affets in his hands.

But the lord shall not have debt, 4 *Rep.* 49. b. 7 *Hen.* 6. 13. for it is not chattel to the lord. 34 *Edw.* 1. *Avowry* 233.

Debt lies upon a simple obligation; count, *Lib. Simple ob-*  
*Intra.* 178. b. sect. 1. for there is a duty certain. *ligation*  
Or upon an obligation with a condition. *conditional.*

Obligation with condition to perform covenants. *No. Lib. Intra.* 130. b. sect. 14.

Obligation to discharge and save harmless the sheriff of all escapes of persons in execution; a good breach to shew that one was in execution *per capias*, &c. and that he suffers him to go at large; without shewing, 1. That he was at large. 2. Without giving notice of it, and request to save him harmless. 3. Without shewing that the *capias* was returned. *Trin.* 12 *Jac.* C. B. Norton against Smith, for the *capias* shall be intended to be well executed.

Upon a single bill obligatory and the count. *Lib. Intra.* 178. b. sect. 1, 2, 3.

Upon a bill obligatory with condition. *Lib. Intra.* 178. c. sect. 4. *antea.*

Debt upon an obligation made in England to be paid in Flanders. *Lib. Intra.* 158. c. sect. 1.

*The bar in debt.*

*Account  
for ar-  
rearages of  
account.*

*1. Before  
auditors.*

*2. Before  
auditors.*

**D**E B T lies for arrearages of account, that he owes nothing is a good bar, *Lib. Intra.* 49. *b. sect.* 2. for this may be put in issue.

And it may be by wager in law, because it is within the statute 22 *Hen.* 6. 35. *pl.* 53. 9 *Hen.* 5. 3. *pl.* 9. 43 *Edw.* 1. *pl.* 3.

And so if it be before an auditor, 10 *Rep.* 103. *a.* 4 *Hen.* 6. 25. *pl.* 3. 20 *Hen.* 6. 16. *pl.* 4. 13 *Hen.* 7. 3. *b.*

If it be for arrearages of account before auditors, imprisonment by auditors is a good bar; but then he ought to be committed forthwith by the auditors, 27 *Hen.* 6. 8. *pl.* 7. 8 *Rep.* 119. *b.* *Com.* 17. for this is as it were the execution against him.

*Non computavit* a good bar, 3 *Mariae*, *Dyer* 122. *pl.* 18. for if there were no account, there can be no arrearages found upon it, for which to bring the action.

*Nul tiel* account, 34 *Hen.* 6. 22. *a.* a good bar.

Arbitrament for arrearages of the account no bar, because one is matter of record, but the arbitrament is not, 3 *Hen.* 4. 5. *pl.* 23. 4 *Hen.* 6. 17. 6 *Hen.* 4. 6. *pl.* 28. 8 *Hen.* 5. 3. *pl.* 13. *Hull*, 3 *Hen.* 6. 55. *a.* and so cannot charge a matter of record.

Auditors discharged by the plaintiff a good bar, *Lib. Intra.* 150. *a. sect.* 9. in account, for this destroys the account upon which the action is brought.

Payment in another county a good bar, *Lib. Intra.* 150. *a. sect.* 10. for the place of payment is not material or traversable.

That he owes nothing *per patriam* a good bar, *Lib. Intra.* 150. *a. sect.* 1. 4 *Mariae*, *Dyer* 145. *pl.* 63. for this is a direct tender of an issue.

That he owes nothing by the law, a good bar, *Lib. Intra.* 152. *c. sect.* 5. although the thing lent be by other hands, 29 *Edw.* 3. 26. *pl.* 24. for the law wager is upon the receipt, and not the delivery.

Debt

Debt upon bailment, the defendant pleads that *Bailment.* they were delivered to be redelivered to B. the which he had done, a good bar, *Nat. Br.* 138. m. for the trust was performed, and the contract thereby discharged.

An accord a good plea, 10 *Hen.* 7. 24. 2 *Rich. Contr.* 3. *Debt* 100. 9 *Rep.* 97. a.

Acquittance of the last day shall discharge all arrearages, 11 *Hen.* 4. 24. 10 *Eliz.* *Dyer* 271. pl. 26. due before; for it shall be intended there was nothing due when the acquittance was given.

The lessee pleads, that the lessor entered before the day of payment, and ejected him, a good bar. 27 *Hen.* 6. 10. pl. 6. 46 *Edw.* 3. 1. pl. 1. *Lib. Intra.* 175. d. sect. 10, 11, 12.

A good bar to say, that the lessor entered before his day without any more, 34 *Hen.* 6. 21. pl. 40.

So if the lessor enter but in part, a good bar. 3 *Rep.* 22. b.

But if the lessee enter again before the day of payment, no bar; for then he regains the possession, and hath elected to wave this advantage of the entry made upon him.

So if the lessor cuts the trees, no bar, because the lessor ejects not the lessee, 33 *Eliz.* but is only a trespasser.

Entry by a stranger which hath a better title, a good bar, *Perkins* 163. *Lib. Intra.* 176. a. sect. 13. 45 *Edw.* 3. 8. pl. 10. for that makes void the lease.

But not for arrearages due before the entry, 9 *Hen.* 6. 17. b. *Cottismore.* 19 *Hen.* 6. 42. b. *Passon.* 20 *Hen.* 6. 20. pl. 15. for so long as the lease continues in being.

Debt for rent, in *Com. M.* where the land is in *Com. E.* levied by distress is a good plea, without saying more, 4 *Hen.* 6. 5. pl. 12. 22 *Hen.* 6. 31. pl. 19. 28 *Hen.* 6. 6. pl. 2. although the lease be by indenture, 4 *H.* 6. 5. pl. 12. 18 *Hen.* 6. 17. a. per 2 Justices, 11 *Hen.* 7. 4. pl. 16. for it shall be intended to be levied where the land lies, which cannot be tried where the action is brought.

But

But if it be in the same county where the land is, then it ought to conclude that he owed nothing, because the country may take notice whether he did or not, 28 H. 6. 6. pl. 2. 33 H. 6. 4. pl. 12. and may try the issue.

Debt upon a lease for tithes, levied by distress, is no bar, because there is nothing subject to distress, 22 H. 6. 35. pl. 53. 11 H. 4. 40. Br. Debt 234. and so the plea is impossible.

A good bar that the lessor distrained, and sold the distress for the rent by the assent of the defendant, 2 Rich. 2. Debt 235. for so he might do and not without his consent.

Surrender before the day a good bar, Lib. Intra. 176. c. sect. 17. for thereby the lease was drowned before the rent due.

*Contract  
personal.*

Accord a good plea, 6 Rep. Lib. Intra. 205. c. sect. 11. and so, that the plaintiff had an obligation for the same duty, 3 H. 4. 17. for this is such satisfaction as the lessor accepted of in lieu of the payment of the rent.

*Servant.*

Payment to the servant no bar, unless the servant was commanded by his master to receive it, or that the money came to the use of his master by his assent, Doct. & Stud. 138 a. for a servant is not a receiver without special warrant.

*Rent upon  
a personal  
thing.*

Upon a lease for years of a stock of cattle, or other personal thing rendering rent at several days, debt lies not till the days be incurred, 3 Rep. 22. a. because the rent is intire, though the days of payment be several.

That he owes nothing, by the law a good bar. 1 H. 6. 1. pl. 3. 9 Ed. 4. 1.

*Servant.*

That he departs his service within the term, a good bar, 40 Ed. 3. 25. pl. 27. against a servant that sues for wages; for the wages is due for the whole time.

That he discharged him of the service within the term to which he agreed, is a good bar, 10 H. 6. 23. pl. 78. for this discharge is accepted in satisfaction.

That



That he retained him not *modo, forma, &c.* a good bar, 38 H. 6. 22. *pl.* 41. *viz.* according to the statutes.

Payment without specialty is not a good bar in debt, brought by a servant retained in husbandry, 40 Ed. 3. 21. *pl.* 27. because he is retained by statute.

And so if one be retained, but not according to the statute, the master may wage his law in debt for the salary, else not. 9 Rep. 87, & 88.

Infancy no bar, 18 Ed. 4. 3. *a. Vavifer*, 10 H. Tabling. 614. *a. Perkins* 4. in debt for diet and necessaries.

Debt upon a simple contract, the defendant pleads that the plaintiff took an obligation for it, a good bar. 6 Rep. 45.

Payment without an acquittance no plea, 1 H. 5. 6. *b.* in debt upon a specialty, because it must be discharged by a thing of as high a nature.

The sheriff pleads that his predecessor suffered *Escape* him at large, and that he did take him again, &c. a good bar, 2 Ed. 6. 67. *pl.* 17. in debt brought against him for an escape in his predecessor's time.

Taken again before the action brought, a good bar, if that he agree not to escape, and make fresh suit, 3 Rep. 52. otherwise not; for then he is *particeps criminis*.

*Nullum fecerunt arbitrium*, a good bar, because *Arbitrament* this lies in notice of the country, Croke, 13 H. 7. 39. *pl.* 4. in action of debt upon a bond, to perform an award.

But if he plead such a plea, he cannot rejoin afterwards, and say that the arbitrators gave no notice, but must plead it in bar, and not by way of rejoinder, Croke, 7 H. 8. 155. *pl.* 8. for such a rejoinder confesses an award, and the bar denies it; so that the bar and the rejoinder cannot stand together.

The arbitrators gave notice, no bar unless the submission be so, *viz.* that the arbitrators should give notice; for else the parties are to take notice at their peril.

The

The defendant said that before the arbitrament made, he discharged the arbitrators; this is a good bar, 21 H. 6. 30. 28 H. 6. 6. 8 Rep. 82. b. and needs not to aver that the arbitrators had notice; for they must be discharged without notice.

*Obligation  
on simple  
accord.*

Debt upon an obligation, accord without satisfaction is no bar, because the duty being certain, ought to be avoided by matter of as high a nature as it was created, which cannot be by parol. 6 Rep. 44. a.

But if the duty accrue not until some subsequent act be performed, there accord with satisfaction a good plea, 6 Rep. 44. a. for there the duty was not certain, but depended on a matter *ex post facto*.

*Acquit-  
tance.*

A. obliged to B. in 100 l. shews 3 acquittances, 1 of 10 l. 2 of 20 l. and 3 of 20 l. which amount to a receipt of 50 l. parcel of the 100 l. in which he was bound to pay 50 l. this is a good bar, because it appears that it was but 50 l. principal debt, for which the bond was made, though the penalty was 100 l. 43 Ed. 3. 31. pl. 26.

*Attainder.*

Attainder of felony no plea, Mich. 38 & 39 Eliz. C. B. in debt, for the attainder doth not discharge the debt.

*Nil debet.*

*Nil debet* in debt upon an obligation is no plea; because an obligation shall not be avoided by a *nude averment*, but by matter of as high a nature. Doct. & Stud. 22.

*Non compos mentis.*

*Non compos mentis* pleaded by the party, is no good bar, Trin. 37 Eliz. B. R. for the party shall not plead in his own disability.

*Payment.*

Payment without acquittance no plea, in debt without a specialty, 5 Rep. 44. because it must be avoided by a matter of as high a nature.

A defeazance upon a statute merchant to pay 20 l. thereof without an acquittance, is a good plea; for the defeazance is instead of an acquittance; and this is without bringing an *audita querela*, when the party is not in execution, 17 Ed. 3. 3. pl. 10. for if he be in execution, there he must have an *audita querela*.

A. is

*A.* is bound by obligation to pay his rent, there payment without an acquittance is a good bar, 46 *Obligation conditional.*  
*Ed. 3. 1. pl. 1.* because the obligation was but conditional, and made no present duty.

When the original contract is for money, an accord with satisfaction is a good bar, 9 *Rep. 79. a.* *Accord.*  
 22 *Ed. 4. 25. a.* for thereby the contract is discharged.

But an accord made with a general receiver is no bar, to his master, if he had not a special authority. *Doct. & Stud. 137. b.*

But when the condition of the agreement is for a collateral thing, there an accord is no bar, 9 *Rep. 79. a.* for such a thing cannot be accorded for.

And if it be before the day of doing the thing, then part of the sum received is a good bar. 5 *Rep. 117.*

But at the day or after it, is no bar, unless it be in another place. 5 *Rep. 117.*

The defendant pleads he paid so much in full satisfaction, the which the plaintiff received, and not that he paid so much, the which the plaintiff received in satisfaction, 5 *Rep. 117. a.* and good; for he must receive the money as it was paid, and not as he will receive it.

Conditions performed is a good bar, 41 *Ed. 3. 10. pl. 7. & fol. 25. pl. 19.* in an action of debt upon a bond for performance of conditions. *Conditions performed.*

The defendant said he made another obligation to the plaintiff, the which he did accept in satisfaction of the former; this is no bar, because it is but a thing in action, *Mich. 12 Jac. C. B. Trin. 6 Jac. C. B.* and one thing in action cannot be discharged with another thing in action.

Payment according to the condition a good bar, 8 *Rep. 58. a.* but he must shew the place where he made the payment, 5 *Ed. 4. 141. b.* because it is material.

Payment of parcel, pending the writ, is not good to abate the writ without an acquittance, 3 *H. 7. 3. pl. 12. 5 H. 7. 10. pl. 15. 7 Ed. 4. 15.*  
*vide*

vide 28 H. 8. *Dyer* 6. pl. 3. because the duty was by specialty.

*A.* is bound by an obligation dated 17th of November 12 Jac. with condition of payment the 19th of November next ensuing. *Per cur'*, Payment 19th of November 13 Jac. is sufficient, for it shall not be intended the 19th of November in the same month, *Mich.* 13 Jac. C. B. for it shall not be intended that an obligation should be made for two days, and the next ensuing shall relate to the month and not the day.

Payment to a creditor of the obligee by his command is a good bar, 46 Ed. 3. 33. pl. 45. *Perkins* 155. a. for it is a payment to himself, being for his benefit.

But then he ought to shew that the creditor was the creditor of the obligee. 27 H. 6. 6. pl. 1.

*Permit.*

Condition to permit one to enjoy, &c. he pleads that he did permit him, and good, 10 Eliz. *Dyer* 279. pl. 6. for that answers the condition fully.

*Retainer.*

The defendant said that the plaintiff was indebted to him, and that he commanded him to retain it, a good bar, 22 Ed. 4. 25, 65. for such retainer is satisfaction in law.

*Bar general to an obligation. Acquittance.*

Acquittance a good bar, from the party himself.

But an acquittance by a general receiver without receipt of the money by his master, is not good, unless he be receiver by deed, and hath authority to make acquittances, *Doct. & Stud.* 137. b. for then his master shall be estopped by the deed, to say he was not his receiver.

*Coverture.*

Coverture a good bar, *Lib. Intra.* 168. b. § 1. in an action of debt brought against a *feme covert*, upon an obligation made during coverture.

*Infancy.*

Infancy a good bar, *Lib. Intra.* 163. a. sect. 1. for an infant cannot be bound, nor contract to his prejudice.

*Non est factum.*

*Non est factum* a good bar, but not if the deed be inrolled, 16 H. 5. b. 9 H. 6. 60. a. *Babington*, 39 H. 6. 32. pl. 45. because the party hath acknowledged.

knowledge it to be his deed before the judge or master of the *Chancery*.

When a deed is but voidable, *non est factum* no plea, 5 *Rep.* 119. *a.* for *non est factum* is a plea to destroy the deed, and to make it absolutely void, and not *ad libitum*.

When three are bound *separatim*, and the seal of one is broken, the other cannot plead *non est factum*, because they are several obligations, 5 *Rep.* *a.* otherwise it is where they are jointly bound.

But it is not so when three are bound without any more, 11 *Rep.* 28. *b.* 3 *H.* 7. 5. 5 *Rep.* 23. *a.* for there they shall be intended to be jointly bound.

But if two be bound in debt against one only it cannot be pleaded, 5 *Rep.* 119. *a.* for it is the debt of both of them.

A recovery in an inferior court of record with execution, a good bar, 6 *Rp.* 45. *b.* but not if it be not in a court of record, or if there be no execution. *Recovery.*

But without execution not, 6 *Rep.* 45. *a.* for that is all one as if there were no recovery had, and so there is no satisfaction.

A recovery is a good bar so long as it is in force, viz. if it be in one of the courts at *Westminster*. 3 *Rep.* 44. *b.*

Release a good bar: A release destroys the duty, *Release.* and consequently the remedy to recover it.

Two bound to *B.* who makes the wife of one of them executrix, and devises his goods to her; this is a good release of the debt, for the debt is part of the goods; for if the obligee make the wife of the obligor his executrix; this is a release in law to the husband; because the obligation is suspended *pro tempore* by the act of the party himself, *Trin.* 12 *Jac.* *C. B.* for the wife cannot sue the husband to recover the debt.

A release of all advantages in account, a good bar in debt upon an account. 8 *Rep.* 152. *a.*

*A.* is bound to *B.* to the use of *C.* the release of *C.* is a good bar, 36 *H.* 8. *Br. Obligation* 27. because



cause the obligation was for the benefit of C. and so upon the matter he was bound to C.

A covenant broken after the death of the testator, the judgment shall be *de bonis testatoris*, 15 Eliz. Dyer 324. pl. 24. for the covenant concerns him only as executor.

Nothing in arrear in debt for rent due *in vita testatoris*, or no such lease, the judgment shall be *de bonis testatoris*, 34 H. 6. 22. a. for such pleas an executor may plead.

An acquittance or a release pleaded and found against him, if it be pleaded made to the executor, the judgment shall be general, 11 H. 6. 8. a. 34 H. 6. 24. a. *quod recuperet de bonis propriis*.

Co-executor pleads, and found against him, the judgment shall be *de bonis testatoris*, 9 H. 6. 44. 11 H. 6. 7. 34 H. 6. 32. a. as well as where both are sued; for one executor may answer if he pleases.

*Ne unques executor* found against him shall be general, 11 H. 4. 5. 11 H. 6. 8. a. *Danby*; *de bonis propriis* for his false plea; for his falshood shall not prejudice the testator's estate, if he can make satisfaction.

But the judgment shall be *de bonis testatoris si, &c.* and if not, *de bonis propriis*. 9 H. 7. 15. pl. 1. 2 Ed. 4. 4. 33 H. 6. 23. 11 H. 6. 10. b.

One pleads *ne unques executor*, the other *plene administravit* all but 40 s. and found against the former, and judgment given, that there should be recovered against both as much as there was in their hands, and the residue against the other, 11 H. 6. 37. b. 46 Ed. 3. 9. b. for his false plea, and it shall be intended that he hath assets, else he would have pleaded so, and not a shifting plea.

One dies intestate, and administration is committed to D. by the ordinary, and the defendant pleads he comes as a servant to D. to administer, *absque hoc* that he did administer in any other manner; this no plea, because he did not shew that it was the ordinary of the place, and judgment *de bonis testatoris*, 31 H. 6. 13. pl. 5. as he ought, because it is traversable.

traversable. This is an unskilful, and not a false plea, therefore the judgment shall not be *de bonis propriis*.

In *plene administravit* pleaded, the judgment was for so much of the principal debt as they had, and for the damages *de bonis testatoris si, &c.* if there were sufficient; and if not, then for damages *de bonis propriis*, and for the residue as much as they had, 8 Rep. 134. judgment special for the debt.

Upon such a plea of the defendant the plaintiff may pray execution forthwith, because it is a confession of the debt; but no execution shall issue, until the defendant hath goods of the testator's. 8 Rep. Shipley's case.

In debt, if the heir confesses the action for as much as did descend, then there shall be a special judgment against him of so much as did descend, *Com. 440. a. 22 Eliz. Dyer 373. pl. 4.* the judgment, *lib. Intra. 172. d.* and he shall be charged for no more. *Against an heir.*

But if he plead any other plea, and it be found against him, the judgment shall be general, *Com. 440.* for the whole for his false plea.

So if he confesses the action, and shews as much as descends, if it appear to the court that the profits of the land from the time of the descent, until the time of the execution, are sufficient for the debt, the judgment shall be general, else not. *Per Dyer. 18 Eliz. Dyer 344. pl. 1.*

If a man have an *elegit* filed on record, and there be a *nihil* returned, he shall never have any other execution, 19 H. 6. 4. 5 Ed. 4. 41. 15 H. 7. 15. for it is the last and highest execution; and the court cannot descend *à majore ad minorem executionem*, but if it be not filed, it is otherwise.

By *stat. 25 Ed. 3. c. 17.* a *capias* was given in debt; and per consequence a *capias ad satisfaciendum* in execution of a judgment in debt. 3 Rep. 12. a.

The defendant for damages and costs shall have the same execution as the plaintiff should have had, Vol. II. I if

if he had recovered against the defendant. *Per stat.* 23 H. 8. c. 15.

*Viz.* of the lands which he had at the time of the judgment, and not before. 8 Rep. 171. 42 Ed. 3. 11. pl. 13.

But if the judgment be the last day of the term, the lands which he had the first day of the term, are liable, because all the term is but one day in law, 42 *Affize* 17. as to the judgment; for a judgment given the last day is as the first day.

If two joint-tenants are for life, and one of them, and against whom the judgment is given, dies before execution, this shall not be put in execution, 13 H. 7. 22. a. *viz.* against the other, because he was not party.

Land in antient demesne shall be put in execution, 5 Rep. 105. a. *Hill.* 11 Jac. C. B. Rot. 2541. *Cox and Barnesly* upon a judgment in debt given at *Westminster*; for the judgment is well given.

The goods that he had at the time of the execution shall be only liable to execution. Rep. 171. a. *Fleetwood's case.* 2 H. 4. 14. 9 H. 6, 58. 11 H. 4. 7. 34 H. 6. 23. b. 21 H. 7. 87. pl. 1.

Unless it be in case of executors, 34 H. 6. 23. b. for they may have other goods of the testator come to their hands afterwards.

But sale by covin after judgment cannot hinder the execution, 22 *Affize* 72. 13 H. 4. 4. pl. 9. 2. If sale be made pending the suit before judgment by covin.

*Hill.* 40 *Elix.* C. B. *per cur.* if a writ of execution be awarded for debt or damages, and between the test of the writ and execution, the party sold the goods *bona fide*, yet these are liable to the execution. 2. If so, where the vendee knows not of the judgment; for it seems hard, and yet it seems as hard on the other side also.

By the *stat.* 29 Car. 2. c. 3. § 16. execution binds the property of goods only from the time it was delivered to the sheriff to be executed.

Declarations.

## Declarations.

B. R.

**U**PON appearance of defendant's attorney, plaintiff's attorney to deliver him a copy of the declaration, and upon such delivery or tender, the defendant's attorney, or any person acting for him, must pay to the plaintiff's attorney, after the rate of 4d. per sheet copywise, and for the stamps (*and for the warrant of attorney, vid. tit. Warrants*) or the declaration may be left in the office (*and notice given thereof, vid. infra*) and thereupon on rule given to plead, judgment for want of a plea may be signed; and before a plea be received, copy of declaration, &c. to be paid for, or judgment may be signed. *Reg. T. 12 W. 3.*

Where common or special bail is filed, and notice thereof given, copy of declaration to be delivered to the defendant's attorney, who must pay for the same as usual; but if he, or his clerk in his absence, refuse to pay, or if the defendant's attorney's

abode

C. B.

**N**O attorney of this court to receive any declaration, unless appearance be first entered with the filazer (*under the penalty in An Act for laying impositions upon proceedings in law*). And no attorney to deliver or cause to be delivered any declaration or count, to the defendant's or tenant's attorney, or to any person for him, until appearance be duly entered with the proper filazer, under the penalty to be expelled the court. *Reg. E. 24 C. 2.*

*Of delivering them.*

Declarations to be delivered or left in the office on special writs, in the same term the writs are returnable, must be left in the office at least 4 days before the end of the term, exclusive of the day of delivery, or leaving the same in the office. *Reg. 9 A.*

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B. R.

abode be unknown, declaration may be left in the office, and notice thereof given to the defendant or his attorney; and such declaration is only deemed well delivered from the time of notice. *Reg. T. 2 G. 2.*

*Of declaring when appearance is entered according to the statute.*

In all causes where a copy of the process is served, and an appearance is entered, or common bail filed by the plaintiff's attorney pursuant to the statute, the plaintiff's attorney must leave a copy of the declaration in the office, and give notice thereof to the defendant, or leave it at his last or most usual place of abode, in which must be expressed the nature of the action, at whose suit prosecuted, and the time limited for the defendant to plead: And if the defendant do not plead in such time, judgment may be signed by default: And from the time of notice declaration is well delivered; and if the defendant after notice don't plead before rule to plead be out, judgment may be signed, without farther calling for a plea, and thereon notice

C. B.

In all cases where a copy of the process is served, and appearance entred by the plaintiff's attorney pursuant to the statute, the plaintiff's attorney must leave a copy of the declaration in the office, and give notice thereof to the defendant, or leave it at his last or most usual place of abode, signifying the nature of the action, at whose suit prosecuted, and in whose office left: And in case of special writs returnable the first return of *Hilary* and *Trinity* terms, and the first or second of *Easter* and *Michaelmas*, defendant to take notice that unless he plead within 4 days after the appearance day of the return of the writ, (*but see the next rule*) and in case of a common *capias*, or any other special writ, within the first 4 days of the next term, judgment to be entred by



# Declarations.

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B. R.

notice of executing *inquiry* given, either by delivering it to the defendant, or leaving it at his last or most usual place of abode. *Reg. T.* 1 G. 2.

C. B.

by default; and from the time of giving notice declaration is well delivered. And if defendant after notice, don't plead before rule to plead be out, judgment may be signed without further calling for a plea,

and thereon notice of executing *inquiry* given to defendant, or left at his last or most usual place of abode. *Reg. M.* 1 G. 2.

But notwithstanding the above rule, all declarations in *London* or *Middlesex*, delivered pursuant thereto on process returnable the 1st or 2d return of any term, where the defendant lives within 20 miles of *London*, to be delivered with notice for the defendant to plead within 4 days after declaration delivered: And all declarations where the plaintiff declares in any other county, or defendant lives above 20 miles from *London*, to be delivered with notice to plead within 8 days after declaration delivered. *Reg. E.* 3 G. 2.

B. R.

Upon all process returnable the 1st or 2d return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within 20 miles of *London*, the declaration to be delivered with notice to plead within 4 days after the delivery thereof; and the defendant must plead in that time without imparlance; and if plaintiff declares in any other county, or defendant lives above 20 miles from *London*, declaration to be delivered with notice to plead within 8 days without an imparlance; or judgment may be signed by default. *Reg. T.* 5 & 6 G. 2.

*General rule.*

B. R.

Upon all process returnable the first or second

C. B.

Upon all process returnable the 1st or 2d de bene

*Of filing declarations*

return esse.

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## B. R.

cond return of any term, where no affidavit of the cause of action is filed pursuant to the statute, the plaintiff may deliver the declaration *de bene esse* at the return of the process, with notice to plead in 8 days after the delivery thereof; and if defendant don't file common bail, and plead in the said 8 days, plaintiff having filed common bail pursuant to the statute, may sign judgment for want of a plea, a rule to plead being duly entered: And upon all process returnable as aforesaid, where such affidavit is filed, declaration may be delivered *de bene esse* at the return of such process, with notice to plead in 4 days after delivery, if the action be laid in *London* or *Middlesex*, and the defendant lives within 20 miles of *London*; and in 8 days, if the action is laid in any other county, or defendant lives above 20 miles from *London*; and if defendant puts in bail, and does not plead within the said times respectively, judgment may be signed, a rule being duly entered. *Reg. M.* 13 G. 2.

*Before  
what hour  
delivered.*

*How de-  
manded.*

## C. B.

return of any term, if the plaintiff declares in *London* or *Middlesex*, and the defendant lives within 20 miles of *London*, the defendant must plead in 4 days after declaration delivered without any imparlance; and such declaration may be delivered *de bene esse*: And if the plaintiff declares in any other county, or the defendant lives above 20 miles from *London*, the defendant must plead within 8 days after declaration delivered, without any imparlance; and in default of pleading as aforesaid, the plaintiff may sign judgment. *Reg. M.* 3 G. 2.

All declarations to be delivered before 9 in the evening. *Reg.* 10 G. 2.

Declarations, &c. must be demanded by a note in writing, *per notice in the offices*, *M.* 1 G. 2. *Vid. tit. Non Pross.*

On a common *clausum fregit*, the plaintiff may declare in any county, or for any cause of action, and so he may if there be an *acetiam*, but then he loses his bail.

On a *precipe quod reddat*, or writ of privilege  
in

in debt, the plaintiff can't declare but in debt, except it be by the by, and after a declaration in debt.

No declaration can be delivered by the by, till a declaration be delivered in the original action.

And it must be between the same parties only, and therefore if an action be brought by husband and wife, and a declaration delivered in that action the husband cannot declare by the by at his own separate suit.

## B. R.

If a defendant be in custody of the marshal of this court at the suit of J. S. or has filed common bail to an action at his suit, any other plaintiff may put in a declaration against him the same term he was committed, or did put in bail; for his being in custody or putting in bail supposes him always present in court to answer any person, so that it is needless to take out further process to bring him in to answer; but to such a declaration delivered to him he must plead at his peril; and such declaration is good although he be illegally in custody, *Lilly's Prac. Reg. Tit. Declaration.*

And where the plaintiff in any action files common bail pursuant to the statute, he may deliver a declaration by the by against the defendant, but no person, except such plaintiff, to deliver a declaration by the by against any defendant by reason of the same common bail being filed. *Reg. M. 10 G. 2.*

## \* Descent.

(A) By the common law.

### R U L E I.

**I**N descents, the law prefers the worthiest of blood.

\* See Blackstone's *Treatise on Descents*. Wood's *Conveyancer, the Calendar of Descents, &c. Vol. I.* p. 20. I 4 Example

## Descent.

*Example 1.*

In descents immediate, the male is preferred before the female, *viz.* the son before the daughter, the brother before the sister, and the uncle before the aunt.

*Example 2.*

In descents immediate, the descendants from males are preferred before those from females; and hence it is, That the daughter of the eldest son (in descents from the father) is preferred before the son of the younger son; the daughter of the eldest brother, or uncle, before the son of younger; and the uncle, nay, the great uncle or grandfather's brother, before the uncle of the mother's side.

## R U L E II.

**T**HE next of blood is preferred before the more remote, tho' equally or more worthy.

*Example 1.*

The sister of the whole blood, before the brother of the half blood.

*Reason.*

She is more strictly joined to the brother of the whole blood, (*viz.* by father and mother) than the half brother, tho' otherwise he is the more worthy.

*Example 2.*

The son or daughter, before the brother or sister, and they before the uncle.

*Reason.*

The son or daughter is nearer than the brother, and the brother or sister than the uncle.

*Exception.*

But the father or grandfather, or mother or grandmother, in a direct ascending line shall not immediately succeed the son or grandchild: The father's brothers (or sisters) shall be preferred before the father; and the grandfather's brother (or sisters) before the grandfather: Altho' the father is nearer of blood to the son than the uncle, or the brother,  
for

for the brother is of the blood of the brother, because both derive from the same parent, the common fountain of both their blood: And therefore the father is preferred in the administration of goods before the son's brother of the whole blood, and a remainder limited *proximo de sanguine* of the son shall vest in the father before the uncle.

Vid. *Litt. Lib. 1. fo. 8, 10.*

## R U L E III.

**A**LL the descendants from such a person as might have been heir to another, hold the same right by representation as that common root from whence they are derived.

1. *Observation of the rule.*

They are in the same right of worthiness and proximity of blood, as their root that might have been heir was if he had been living.

*Example 1.*

The son or grandchild (whether son or daughter,) of the eldest son, succeeds before the younger son.

*Example 2.*

The son or grandchild of the eldest brother, before the youngest brother.

*Observation of the examples.*

And so through all the degrees of succession by the right of representation, the right of proximity is transferred from the root to the branches, and gives them the same preference as the next and worthiest of blood.

2. *Observation of the rule.*

This right transferred by representation is *infinite* and unlimited in the degrees of those that descend from the represented, for the son, grandson, and great grandson, and so *in infinitum*, enjoy the same privilege of representation as those from whom they derive their pedigree have, whether in descents lineal or transversal.



## Descent.

*Example.*

The great grandchild of the eldest brother (son or daughter) shall be preferred before the younger brother.

*Reason.*

Tho' the female be less worthy than the male, yet she stands in right of representation of the eldest brother, who was more worthy than the younger.

*Example.*

If a man have two daughters and the eldest dies in the father's life, leaving six daughters, and then the father dies; the youngest daughter shall have an equal share with the other six daughters.

*Reason.*

They stand in representation and stead of their mother, who could have had but a moiety.

## R U L E IV.

**W**ithout a special custom to the contrary, the eldest son, or brother, or uncle, excludes the younger; and the males in an equal degree do not all inherit: But all the daughters, whether by the same or divers venters, do inherit together to the father, and all the sisters by the same venter do all inherit to the brother.

## R U L E V.

**T**HE last actual seisin in any ancestor, makes him, as it were, the root of the descent equally to many intents as if he had been a purchaser.

*Observation.*

Therefore he that cannot derive his succession, from him that was last actually seised, tho' he might have derived it from some precedent ancestor, shall not inherit.

*Example 1.*

And hence it is, that where lands descend to the eldest son from the father, and the son enters and dies without issue, his sister of the whole blood shall inherit as heir to the brother, and not the younger son of the half blood.

*Reason.*

*Reason.*

He cannot be heir to the brother of the half blood.

*Example 2.*

If the eldest son had survived the father, and died before entry, the youngest son should inherit as heir to the father, and not the sister.

*Reason.*

He is heir to the father that was last actually seised.

*Example 3.*

And hence it is, that tho' the uncle is preferred before the father in descents from the son; yet if the uncle enter after the death of the son; and die without issue, the father shall inherit to the uncle.

*Reason.*

*Quia seifina facit stipitem.*

## R U L E VI.

**W**Hosoever derives a title to any land, must be of the blood to him that first purchased it.

*Example 1.*

If a son purchases lands and dies without issue, it shall descend to the heirs of the part of the father; and if he has none, then to the heirs of the part of the mother.

*Reason.*

Tho' the son has both the blood of the father and of the mother in him, yet he is of the whole blood of the mother, and the consanguinity of the mother are *consanguinei cognati* of the son.

*Example 2.*

But if the father purchases lands, and they descend to the son, who dies without issue, and without any heir of the part of the father, it shall not descend in the line of the mother, but escheat.

*Rea-*

*Reason.*

Tho' the *consanguinei* of the mother, are the *consanguinei* of the son, yet they are not of the consanguinity to the father, who was the purchaser.

*Example 3.*

*Vide post.*

If there be none of the blood of the grandfather, yet it may resort to the line of the grandmother.

*Reason.*

Her *consanguinei* are as well of the blood of the father, as the mother's consanguinity is of the blood of the son.

*Example 4.*

If the grandfather purchases lands, which descended to the father, and from him to the son; if the son enters and dies without issue, his father's brothers or sisters, or their descendants, or, for want of them, his great grandfather's brothers or sisters, or their descendants, or, for want of them, any of the consanguinity of the great grandfather, or brothers or sisters of the great grandmother, or their descendants, may inherit.

*Reason.*

The consanguinity of the great grandmother is the consanguinity of the grandfather.

*Observation.*

But none of the line of the mother or grandmother, viz the grandfather's wife, shall inherit; for they are not of the blood of the first purchaser.

*Note 1.*

The same rule *à converso* holds in purchases in the line of the mother or grandmother, they shall always keep in the same line that the first purchaser settled them in.

*Note 2.*

But it is not necessary, that he that inherits be always heir to the purchaser; it is sufficient if he be of his blood, and heir to him that was last seised;

seised; for if the father purchases lands which descended to the son, who dies without issue, they shall never descend to the heir of the part of the son's mother; but if the son's grandmother has a brother, and the son's great grandmother has a brother, and there are no other kindred, they shall descend to the grandmother's brother; and yet if the father had died without issue, his grandmother's brother should have been preferred before his mother's brother, because the former was heir of the part of his father tho' a female, and the latter was only heir of the part of his mother. But where the son is once seised, and dies without issue, his grandmother's brother is to him heir of the part of his father, and being nearer than his great grandmother's brother is preferred in the descent. But this is always intended so long as the line of descent is not broken; for if the son alien those lands, and then repurchase them again in fee, now the rules of descents are to be observed, as if he were the original purchaser, and as if it had been in the line of the father or mother.

*See before*  
Exam. 2.

## R U L E VII.

**I**N all successions, in the line descending, transversal, or ascending, the line that is first derived from the male root has always the preference.

*Example in the line descending.*

*A.* has issue two sons *B.* and *C.* *B.* has issue a son and a daughter *D.* and *E.* *D.* the son has issue a daughter *F.* And *E.* the daughter has issue a son *G.* Neither *C.* nor any of his descendants shall inherit so long as there are any descendants from *D.* and *E.* and neither *E.* the daughter, nor any of her descendants shall inherit so long as there are any descendants from *D.* the son, whether they be male or female.

2dly,

2dly, *In the collateral line.*

As brothers and sisters, the same instances as before applied thereto, evidence the same conclusion.

3dly, *Successions in the line ascending.*1. *Rule in the ascending line.*

If a son purchases lands in fee simple, and dies without issue, those of the male line ascending *usque infinitum* shall be preferred in the descent, according to their proximity of degree to the son.

*Example 1.*

The father's brothers and sisters and their descendants, shall be preferred before the brothers of the grandfather and their descendants.

*Example 2.*

If the father has no brothers nor sisters, the grandfathers brothers and their descendants.

*Example 3.*

For want of brothers, his sisters and their descendants, shall be preferred before the brothers of the great grandfather.

*Observation.*

For altho' the father or grandfather cannot immediately inherit to the son, yet the direction of the descent to the collateral ascending line, is as much as if the father or grandfather had been by law inheritable; and therefore as in case the father had been inheritable, and should have inherited to the son before the grandfather, and the grandfather before the great grandfather, and consequently if the father had inherited and died without issue, his eldest brother and his descendants should have inherited before the younger brother and his descendants; and if he had no brothers but sisters, the sisters and their descendants should have inherited before his uncles or the grandfather's brothers and their descendants. So tho' the father



is excluded from inheriting, yet the descent is directed as it should have been, had the father inherited, *viz.* it lets in those first that are in the next degree to him.

## 2. Rule in the ascending line.

The line of the part of the mother shall never inherit as long as there are any, tho' never so remote, of the line of the part of the father.

### Example.

If the mother has a brother, yet if the great great grandfather, or great great great grandmother of the father has a brother or sister, he or she shall be preferred, and exclude the mother's brother, tho' he is much nearer.

## 3. Rule in the ascending line.

The male line of the part of the father ascending, shall *in æternum* exclude the female line of the part of the father ascending.

### Example.

If a son purchases lands and dies without issue, the sister of the father's grandfather, or of his great grandfather, and so *in infinitum* shall be preferred before the father's mother's brother, tho' the father's mother's brother be a male, and the father's grandfather or great grandfather's sister be a female, and more remote.

### Reason.

She is of the male line, which is more worthy than the female line, tho' the female line be also of the blood of the father.

## 4. Rule in the ascending line.

As in the male line ascending, the more near is preferred before the more remote; so in the female line descending, if it be of the blood of the father, the more near is also preferred before the more remote.

### Example.

## Descent.

*Example.*

If one purchases lands and dies without issue, and the father, grandfather, and great grandfather, and so upward, all the male being dead, without any brother or sister, or any descending from them; but the father's mother or sister has a brother, and the father's grandmother has a brother: Tho' all these are of the blood of the father; and tho' the remotest of them shall exclude the son's mother's brother; and tho' the great grandmother's blood has passed thro' more males of the father's blood, than the blood of the grandmother or mother of the father; yet the father's mother's sister shall be preferred before the father's grandmother's brother, or the great grandmother's brother.

*Reason.*

They are all in the female line, and the father's mother's sister is the nearest, so she shall have the preference as well as in the male line ascending, the father's brother or his sister shall be preferred before the grandfather's brother.

*5. Rule in the ascending line.*

But yet in the last case where the son purchases lands, and dies without issue, and without any heir on the part of the grandfather, the lands descend to the grandmother's brother or sister, as heir on the part of his father.

*Observation.*

Yet if the father had purchased this land and died, and it descended to his son, who died without issue, the lands should not have descended to the father's mother's brother or sister, for the reasons upon the 3d Rule: But for want of brothers or sisters of the grandfather's great grandfather, and so upwards in the male ascending line, it should descend to the father's grandmother's brother or sister which is his heir of the part of the father, who should be preferred before the father's mother's brother, who is the heir of the part of the mother of the purchaser, tho' the next heir of the

the part of the father of him that last died seized; and therefore, as if the father that was the purchaser had died without issue, the heirs of the part of the father, whether of the male or female line, should have been preferred before the heirs of the part of the mother; so the son, who stands now in the place of the father, and inherits to him primarily in his father's line, dying without issue, the same devolution and hereditary succession should have been as if his father had immediately died without issue, which should have been to his grandmother's brother, as heir of the part of the father, tho' by the female line, and not to his mother's brother who was only heir of the part of his mother, and who is not to take till the father's line both male and female be spent.

*6. Rule in the ascending line.*

If the son purchases lands, and dies without issue, and it descends to any heir of the part of the father, and then if the line of the father (after entry and possession) fail, it shall never return to the line of the mother; tho' in the first instance or first descent from the son, it might have descended to the heir of the part of the mother.

*Reason.*

For now by this descent and seisin it is lodged in the father's line, to whom the heir of the part of the mother can never derive a title as heir, but it shall rather escheat.

*Observation.*

But if the heir of the part of the father had not entered, then the line had failed, it might have descended to the heir of the part of the mother, as heir to the son, to whom immediately, for want of heirs of the part of the father, it might have descended.

*7. Rule in the ascending line.*

And (for the same reason) if it had once descended to the heir of the part of the father of the grandfather's

grandfather's line, and the heir had entered, it should never descend to the heir of the part of the father of the grandmother's line.

*Reason.*

The line of the grandmother was not of the blood or consanguinity of the line of the grandfather's side.

8. *Rule in the ascending line.*

If for default of heirs of the purchaser of the part of the father, the lands descend to the line of the mother, the heirs of the mother of the part of her father's side, shall be preferred in the succession before her heirs of the part of her mother's side; because they are the more worthy.

(B) *Descents by custom.*

**D**Escents of fee simple by custom are of several kinds; sometimes to all the sons, or to all the brothers where one brother dieth without issue, as in gavel-kind; all the lands in England were in the nature of gavel-kind before the Norman conquest, and descended to all the issue equally; but as the Normans did not conquer Kent, this custom or tenure is still preserved in some places there. Sometimes lands descend to the youngest son, as in *Borough-English*, and sometimes to the eldest daughter, or the youngest, &c.

(C) *Descents by statute.*

**I**N fee-tail according to the statute of *Westminster 2.* or *13 Edw. 1. c. 1.* directed by the manner of the settlement or limitation.

Detinue.

## Detinue.

(A) *Who shall have it.*

**G**OODS taken out of the possession of the *Husband.*  
 wife a *feme sole* which marries and dies, the husband shall not have detinue unless his wife make him executor, 38 *Hen.* 6. 26. *pl.* 38. for the husband gained no property by the marriage, because the wife was out of possession at the time.

Executor shall have detinue for the goods of the testator. *Executors.*

A woman shall have it after divorce for the goods given in marriage with her, *Nat. Br.* 139. *M.* 16 *Hen.* 8. 7. *pl.* 1. 28 *Hen.* 8. *Dyer* 13. *pl.* 61. for the divorce deverts the property out of the husband, which he only had by virtue of the marriage. *Women.*

A woman shall have it for a *rationabili parte bonorum* where the custom gives such part, *Nat. Br.* 1221. for such custom doth vest a property in her.

Custom that the heir shall have the principal goods of his ancestor, he shall have detinue for them, 30 *Edw.* 3. 2. *pl.* 9. 39 *Edw.* 3. 6. *pl.* 24. against the executor. *Heir.*

And so the heir of a copyholder shall have detinue for the copy before his admittance, 4 *Rep.* 22. *b.* 3. for he is intitled from his ancestor.

*A.* leases a house with implements to *B.* for years, *A.* shall have detinue for the implements at the end of the term, although they are wasted, 20 *Hen.* 6. 16. *pl.* 2. for by the lease the property was not altered. *Lessor.*

The plaintiff in a *replegiare* shall not have detinue for cattle taken in *Witbernam*, 6 *Hen.* 7. 8. *b.* 2 *Hen.* 4. 9. *Br. Debt* 51. for by the *Witbernam* he is deverted of his property, because he that brings a detinue ought to have property, 6 *Hen.* 7. 9. *Nat. Br.* 138. 2 *Hen.* 4. 9. which here he hath not. *Proprietor.*

If



## Detinue.

If a horse be stole and sold in a market-overt and be not tolled according to the statute, 2 & 3 Mar. c. 7. the owner shall have detinue by the same statute, for by such sale the property is not altered, altho' tolled, therefore the owner shall have detinue. *Stat. 34 Hen. 8. cap. 26.*

*King.*

The king shall have detinue for cattle of an outlawed person, 4 Hen. 7. 17. pl. 3. *Br. Outlawry* 41. against him that detains them, for the property is vested in the king by the outlawry before seizure.

*Use.*

If a thing be delivered to *A.* to deliver to *B.* yet *B.* shall have detinue, 18 Hen. 6. 9. a. for the property is adjudged in *B.* because it was delivered to *A.* for his benefit only.

*Husband  
and wife.*

Husband and wife may join in detinue for a deed of lands, 38 Hen. 6. 25. *Lib. Intra.* 209. d. sect. 3. & fol. 217. a. sect. 2. viz. concerning lands of the wife.

But this is when the defendant comes not to the deed by bailment; for if the husband bail them he shall have it alone, *ibid.* 8 Edw. 4. 15. 38 Hen. 6. 25. a. for the privity lies betwixt the bailor and bailee. *Vid. tamen Lib. Intra.* 117. 4. sect. 2.

If bailment be before coverture they ought to join, 21 Hen. 7. 29. for conformity; but upon bailment during the coverture, the husband sole shall have detinue, 8 Edw. 4. 16. for that is adjudged his bailment only.

*Donor.*

The donor in tail shall have detinue for the indenture after the death of the donee without issue, *Nat. Br.* 138. f. in respect of his reversion which depends upon the deed.

*Stranger.*

A stranger shall not have detinue for deeds unless he makes title to the land; but upon request to deliver them, and a refusal, he shall have an action upon the case, 33 Hen. 6. 26. pl. 12. if the deeds do concern him.

*Fcoffee.*

If one have deeds, and some concern warranty, some not, and infeof *B.* with warranty, *B.* shall not have detinue for the deeds which serve to de-raign the warranty *per amount*, 1 Rep. 2. 44.

*Edw.*

*Edw. 3. 11. b.* because they do not wholly concern him.

Neither is it material for to maintain the title, but they shall have them which concern the possession only, *ibid. viz.* of the land, and the feoffor is to have the deeds to maintain his warranty.

But if a feoffment be made without warranty, the feoffee shall have detinue for all, *1 Rep. 1. viz.* all the deeds that do any ways concern the title, that he may be able to defend it.

Unless it be *per dedi*, then it is express warranty, during the life of the feoffor, *per stat. de bigamis, cap. 6. 1 Rep. 1.* for the word *dedi* implies so much.

But in all these cases the feoffee shall have detinue for them against a stranger that cannot intitle himself by the feoffor, *Nat. Br. 138. g. 1 Rep. 2. o. 7 Edw. 4. 26.* because a stranger cannot pretend any colour.

And if the thing which lies in grant, as a lordship, rent, advowson, &c. be granted to *A.* with warranty, which grants it to *B.* with warranty, *B.* shall have detinue for the ancient deed, because he cannot make a title without the ancient deed. *1 Rep. 1. b. 2.*

So in other cases, the feoffee shall have detinue for every deed which concerns the making of his estate good *Nat. Br. 138. k.*

*Note*; If *A.* bail deeds of land to *B.* to rebail them to him and his heirs, and afterwards enfeoff *C.* in fee, yet *C.* shall not have detinue against *B.* for it is a charge to *A.* *per* cause of bailment. *18 Hen. 7. 48. pl. 3.* *Note.*

If *A.* grant a thing that lies in grant to *B.* with warranty, *B.* shall have detinue for the ancient deed, because this makes his title. *1 Rep. 1. b.* *Feoffor.*

*A.* makes a deed of feoffment and delivers this upon condition, if the condition be not performed he shall have detinue. *37 Hen. 6. 37.*

The heir of the disseisee shall have detinue for the deeds, *Nat. Br. 138 l.* for he is in by descent, and the law will judge his title good till it be evicted.

The

*Heir special.*

The heir in tail shall have detinue against the the discontinuance for the deed of entail, *Nat. Br.* 138. *b.* 9 *Edw.* 4. 52. *pl.* 15. for it belongs to him to make out his title by virtue of the intail.

And altho' there be a warranty to the feoffee by his father, 9 *Hen.* 6. 15. *pl.* 5. 4 *Hen.* 7. 10. *pl.* 4. for the heir in tail comes in paramount the father.

*Joint-tenant.*

One joint-tenant sole delivers the deed to redeliver to him, he alone shall have detinue by reason of this special bailment, 13 *Rich.* 2. *Br.* 648. tho' the deed doth belong unto both, for the bailment is the cause of the action.

*Joint-tenant survivor.*

*A.* enfeoffs *B.* and *C.* and the heirs of *B.* and delivers all the deeds to *B.* who dies, *C.* shall have detinue for the deed of feoffment, but not for the other deeds, 34 *Hen.* 6. 1. *a.* 1 *Rep.* 1. *a.* *Nat. Br.* 138. *f.* *viz.* which concern the inheritance, but the deed of feoffment concerns the estate for life as well as the inheritance.

*Recusant.*

Recusant shall not have an action for any thing seised into the hands of the king. *Stat.* 3 *Jac.* cap. 5.

*Remainder.*

22 *Hen.* 6. 1. A tenant for life dies, he in the remainder shall have detinue for the deed, 9 *Hen.* 6. 54. *pl.* 39. for now his title is come in possession, and so the deed that created it belongs to him.

If tenant for life die, he in the remainder of a copyhold shall have it. 4 *Rep.* 22. *b.*

Land is given to *A.* for the life of *B.* the remainder to *C.* in fee, *B.* dies, *C.* shall have detinue against *A.* without request, because he had interest in the deed during the life of *B.* 33 *Hen.* 6. 30. *b.* 35 *Hen.* 6. 9. *a.* in respect of his remainder.

*Tertenant.*

Tertenant shall have detinue for the deeds, 1 *Rep.* 2. *a.* which concerns the land in his possession.

*Lord.*

The lord by escheat shall have detinue, 1 *Rep.* 2. *a.* 10 *Edw.* 4. 14. *b.* for the deeds which concern the land escheated.

(B) Against

(B) *Against whom it lies.*

**A**N administrator sold a thing, the executor proves the will, he shall have detinue against the vendee of the administrator, *Com.* 275. for now the administrator's title and property is destroyed, and the sale accounted void irreplevisable.

*Administrator.*

Avowant returns irreplevisable, the other tenders amends, and upon refusal shall have detinue, 8 *Rep.* 147. *a.* for the property is in him, 10 *Eliz. Dyer* 280. *pl.* 14. notwithstanding the distress, for the distress did but put them in the custody of the law, and altered not the property.

*Avowant.*

Goods delivered to *A.* to keep, and they are stolen, yet detinue lies against him, 4 *Rep.* 83. *b.* for he ought to have kept them at his peril, and he shall have his remedy against the thief.

*Bailly of goods.*

But if he take them to keep as he would his own, and they are stolen, detinue lies not, 4 *Rep.* 83. for here he warrants not the safe keeping of them, for he cannot warrant his own from stealing.

Goods delivered to *B.* to deliver to *C.* yet *C.* shall have detinue against *B.* 18 *Hen.* 6. 9. *a.* *Nat. Br.* 138. *a.* for the delivery of them to be delivered to *B.* vests the property of them in *B.* and not in *C.*

It lies not against husband and wife, supposing they detain, 38 *Edw.* 3. 1. *pl.* 1. 13 *Rich.* 2. *Breve* 644. for the wife cannot detain, for it is the detainer of the husband.

*Husband and wife.*

But of bailment to the wife, *dum sola fuit*, and if the husband did detain, 43 *Edw.* 3. 18. *pl.* 1. *Lib. Intra.* 219 *d. sect.* 4. it lies.

A carrier loses *B.*'s goods, or they are stolen from him, yet detinue lies against him, 4 *Rep.* 84. *a.* 2 *Hen.* 7. 11. *b.* for the property was in the owner, and the law chargeth the carrier with them.

*Carrier.*

It lies against an executor, but he shall not be charged but for his detainer, 39 *Edw.* 3. 5. *pl.* 21. in his own time, and not for the testator's detainer.

It

It lies against an executor upon a *rationabili parte bonorum*, 17 *Edw.* 3. 9 *pl.* 29. brought by the wife of the testator.

*Lessee.*

Lessor shall have detinue for implements leased with the house, at the end of the term against the lessee, altho' they are wasted, 20 *Hen.* 6. 16. *pl.* 2. for the property of them was not devested out of the lessor by the lease.

*Trover of goods.*

Against him that finds goods, if they be wasted by wilful negligence, otherwise if it be by casual means. *Doct. & Stud.* 129. *b.*

*Vendee.*

If a horse be stole and sold in the market, but not according to the statute, the owner shall have detinue, *stat.* 3 *Mar.* c. 7. for the sale is void, and so the property is not altered.

Administrator sold a thing, the executor proves the will, he shall have detinue against the vendee of the administrator. *Com.* 275.

*Sheriff.*

It lies against a sheriff, where he returns upon a *Returno habendo, quod averia elongata sunt.* *Stat.* West. 2. c. 2. 9 *Hen.* 6. 42.

*Feoffor.*

If *A.* enfeoff *B.* with warranty, *B.* shall have a detinue against *A.* for deeds that comprehend warranty, or are material for the title. 1 *Rep.* 2. because the warranty is for his benefit.

If *A.* enfeoff *B.* without warranty, *B.* shall have it against *A.* for all the deeds concerning the land, the feoffor needs not any deeds to make out the warranty.

And if the thing lies in grant, then it lies against the feoffor for all. 1 *Rep.* 1.

And so in any case for a deed that makes his estate good. *Nat. Br.* 138. *k.*

A lease made to *A.* for the life of *B.* remainder over to *C.* *B.* dies, *C.* shall have detinue against *A.* with request, because *C.* had interest in it before, 33 *Hen.* 6. 30. *b.* and he knows that by the death of *B.* his estate is determined.



## (C) For what things it lies.

**D**etinue ought to be of a thing certain, *Nat. Br. 138. a.* because the very thing detained is to be recovered.

Detinue lies for money in a bag, or box, or coffer, *Nat. Br. 138. a.* for that may be certainly known.

But otherwise it lies not, *Nat. Br. 138. a. 22 Hen. 8. Dyer 22. pl. 137.* for then the money cannot be known.

It lies of *rationabili parte bonorum*, 17 *Edw. 3. 9. pl. 29.* by custom.

Custom that the heir shall have the principal goods, detinue lies for them, 30 *Edw. 3. 2. pl. 39. 39 Edw. 3. 6. pl. 24. & fol. 9. pl. 15.*

Land leased with implements at the end of the term, detinue lies for them, altho' wasted, 20 *Hen. 6. 16. pl. 2.*

If goods are lost, detinue lies not, *Nat. Br. 138. a. 18 Hen. 6. 9. a.* against the bailee by the party to whom they should have been bailed over.

A. bails goods to B. which are stole, detinue lies against B. for them, 4 *Rep. 84.* but if he receive them to keep as he does his own goods, and they are stole, it lies not, 4 *Rep. 83. 9 Edw. 4. 40. pl. 22.*

Carrier loseth goods, or is robbed, yet detinue lies against him, 4 *Rep. 84. 2 Hen. 7. 11. b.*

A. contracts for corn to be delivered at a day to come, he shall have a detinue at the day for this, *No. Lib. Intr. 169. b. sect. 1.* for by the contract he had a property in this corn.

After a divorce it lies for goods given in marriage, *Nat. Br. 139. a. 26 Hen. 7. pl. 1. 28 Hen. 8. Dyer 13. pl. 61.*

It lies of a horse, cow, &c. or more cows or horses, *Nat. Br. 138. a.* be the number what it will.

It lies for the plaintiff in replevin for goods taken in *Withernam*, because he from whom they

*Rationabili parte bonorum.*

*Heir.*

*Goods lost.*

*Carrier loseth goods. Corn.*

*Divorce.*

*Replevin.*

*Tender of  
amends in  
replevin.*

were so taken had not the property in them, 2 Hen. 4. Br. Debt 51. 6 Hen. 7. 8. b.

The plaintiff in a *replegiare* after return irreplevisable upon tender of amends shall have detinue for the goods, 8 Rep. 147. a. for he had the property in them, 10 Eliz. Dyer 8. 280. pl. 14. notwithstanding such writ.

*Corn and  
wine.*

A. delivered B. corn and wine, &c. and they perish, yet detinue lies against them. Doct. & Stud. 129. a.

But if it be a thing that is to be re-delivered, as a horse, &c. and if it be used in other manner than was agreed, and if it perish in default of the party to whom it was delivered, an action lies. Doct. & Stud. 129. a.

But if it be used but in such manner as it was agreed, and it perish, but not by default of the party to whom it was delivered, action lies not. Doct. & Stud. 129. a.

## Distress.

### (A) *Who may distrain.*

*Lord.*

**L**ORD of a manor may distrain cattle, &c. for damage feasant, when the tenant puts in more cattle in the common than he ought to do. 43 Eliz. 3. 32. 46 Eliz. 3. 12. pl. 13.

For rent service, &c. 1 Inst. 142.

For an amerciament in his leet. 6 Rep. 25. a. 20 Hen. 7. 66.

For a relief, &c. but not his executors. 4 Rep. 49.

For forfeitures of inmates, or for erecting cottages. 31 Eliz. c. 2.

*Commoner.*

A commoner may distrain the cattle of a stranger, damage feasant. 9 Rep. 112. 15 Hen. 7. 2. 33 Hen. 8. 15. 3 Lev. 104. No. Lib. Intra. 573. d. § 4.

*Tenant,  
&c.*

Tenant at sufferance may distrain damage feasant. 4 Hen. 7. 3.

So may any person claiming a rent, &c. by prescription or by grant.

*Cestuy que use* since the *stat.* 27 Hen. 8. of uses may distress. *Cestuy que use.*

Executors of tenants for life may distress for rent in arrear. *Stat.* 32 Hen. 8. c. 37. *Ld Raym.* 172. *Lut.* 1230. *Executors.*

Baron may distress sheep delivered to his wife *dum sola* to dung her land, as damage-feasant after refusal to take them away. 43 *Eliz.* 3. 32. *Baron & feme.*

A. seised of 200 acres of open moor sold 50 to B. each ought to inclose against the other, and if the cattle of one go into the land of the other, they may be distrained damage-feasant, *Dyer* 372. for by the sale the lands are severed. *Tenants in common.*

Where two parcels of land are distinctly let, there cannot be a joint distress for both rents. 2 *Str.* 1040.

## (B) For what cause.

A Distress may be for a fine or amerciamment in a court leet. 8 *Rep.* 21, 41. 11 *Rep.* 45. *Fines and amerciamments.*

An amerciamment in a court baron, by special prescription, 16 Hen. 7. 14. 9 Hen. 7. 22. as for not doing suit there, *Vid.* 4 *Rep.* 95. a. 1 *Ven.* 105.

An amerciamment at the sheriff's torn, &c. if there be a special prescription to amerce and distress. 33 Hen. 8. 30. 1 *Vent.* 105. 2 *Keb.* 701, 739, 745.

*Pro certo letæ* by prescription, otherwise not. 11 *Rep.* 44. *Pro certo letæ.*

A tax set by the inhabitants of a parish, justices of peace, &c. *Doct. & Stud.* 74. 22 *Eliz.* 3. 10. 2 *Lutw.* 1179. *Salk.* 206. *Cro. Car.* *Tax.*

Suit at a mill. 22 Hen. 6. 14. f. *Nat. Br.* 122. *Suit, &c.*

Rent-service and all manner of services certain, *Doct. & Stud.* 74. 1 *Inst.* 96 As for heriot-service, 1 *Inst.* 161. b. for which also one may seise at election *Fitz. Heriot* 2. *Cro. Eliz.* 32, 590. But for heriot-custom one may only seise, *Fitz. Heriot* 7. except there be a custom also to distress, *Services.*

and a seizure must be only of the proper beasts of the tenant, but a distress may be of any man's upon the land, 1 *Jones* 303. *Cro. Car.* 260. *Cro. Eliz.* 32, 590.

*Rents.*

Rent-service (*see before*) any rent by prescription, *Fitz. Charge* 1. or by grant, but not for rent-service made seck by grant. 1 *Inst.* 150, 151. On lease of tithes rendering rent, no distress to be of the tithes, because they are the things. 11 *Hen.* 4. 40.

Tenant in dower can't distrain for arrearages of rent before the recovery. 40 *Eliz.* 3. 22.

*Reliefs,  
&c.*

For reliefs, estrays, pledges, &c. *vid* (A)

*Copyhold.  
Fines.*

But not for a fine on alienation of a copyholder, due by custom, unless customary to distrain; *contra* if due by tenure. 1 *Jo.* 132. 3 *Bulst.* 323. *Lat.* 37, 95, 130.

*Nomine  
Pœnæ.*

No distress for *nomine pœnæ*, if rent-charge is granted with it, and clause of distress, and the year incurs, for it depends on the rent. *Winch* 7.

*Without  
cause.*

Where a distress is taken without cause, the owner may rescue it before impounding, but not after. *Salk.* 247. *Ld. Raym.* 105.

(C) *At what time.*

*Night.*

**D**istress for rent-service, charge, or seck, or other duty (except damage feasant) not to be in the night. 9 *Rep.* 66. 1 *Inst.* 142.

*After the  
term.*

After the term ended, no distress can be. 14 *Hen.* 4. 31.

But any person having rent due upon any lease for life, for years, or at will, determined, may distrain for the arrears after the determination of the leases, provided that such distress be made within six kalendar months after the determination of such lease, and during the continuance of the landlord's title, and the possession of the tenant, from whom the arrear became due. *Stat.* 8 *A. c.* 14. § 6, 7.

*During the  
term.*

No distress to be during the term, except the rent be made payable before the term ended. *Dec. & Stud.* 74.

The husband leases his wife's lands, the wife dies without issue, the husband cannot distrain, because the reversion goes to her heir. *Dyer* 28. 9 *Hen.* 6. 45.

No distress to be for rent where there is no reversion; as where a termor grants away all his term to another, rendering rent. 2 *Lev.* 80. *Lat.* 211. *Bac. Abr.* 106. *Freem.* 218. *Cro Jac.* 487. *Mo.* 126. *Str.* 405. *Bro. Abr. tit. Distress, pl. 7. ibid. Debt. pl. 39. Al.* 57. *Co. Lit.* 292. *b. Str.* 405.

*Vid. stat.* 11 *G. 2. c. 19. Post. D.*

## (D). In what place.

**N**OT on the king's lands whilst in his possession. *Savil* 125. 5 *Rep.* 92.

The king may distrain in all the lands of his tenants, tho' held by others, for rents, avowries, fee-farms, &c. 1 *Ro. Abr.*

*King's lands.*  
*His tenants.*

For an amerciamient in the torn, the sheriff may distrain throughout the county. 12 *Hen.* 4. 24. 13 *Hen.* 4. 9. *Fitz. Avowry,* 194.

*County.*

So one fined at the leet, being one of the deziners, to be distrained thro' all the jurisdiction of the leet, tho' he be of another dezin. 11 *Rep.* 45. a. 11 *Hen.* 4. 89.

But where one has a leet within his manor, he can't distrain out of his manor. 4 *E.* 3. 26. but he may within the jurisdiction of the court. *Fitz. Avowry* 194. 225.

*Manor.*

The sheriff may distrain the goods of any man, at any place within his county, in another man's house or ground, as well as the owners. 1 *Roll. Abr.* 670.

*House.*

For a tax by parliament a distress may be throughout all the village. 11 *Hen.* 7. 18 *E.* 3. 11.

*Village.*

A heriot service in any place where found, tho' not within the fee. 6 *E.* 3. 208.

*Any places.*

So if one distrains cattle, and puts 'em in pound, and then takes 'em out, he may distrain or take 'em again in any place. 24 *Hen.* 6. 18.



*Other**lands, &c.*

Yet for rent or any other thing due for any land, &c. charged therewith : But if he comes to distrain, and the owner seeing his purpose drives away the beasts, or carries out the goods in his view, he may pursue, and take it presently on such fresh pursuit, tho' in another's ground, or house, or in the highway, let who will be the owner of the goods. 1 Ro. Abr. 671. 1 Inst. 161. 2 Inst. 132.

*Inn, &c.*

The goods or beasts of a man coming into an inn, are not to be distrained there. 3 E. 3. *Distress* 19.

Cattle coming to *London* for sale, were distrained in a close they were lodged in on the road, for the rent of the land, and the distress adjudged good, 2 Lat. 1165. 3 Lev. 260. *vid* 3 Cro. 549, 628. but afterwards decreed in *Chancery*, that the owner should be repaid the value of his cattle, and all his charges both in law and equity.

*Levant  
and couchant.*

Cattle put into land charged with a rent charge, may be distrained upon the land, tho' neither levant nor couchant there; *contra*, if they escape. 15 Hen. 7. 17. 2 Leon. 7.

*House.*

The lord may enter the house of his tenant to distrain, if the door be open. 38 Hen. 6. 26.

But if he finds the house fast with a bar, &c. and break into it to distrain, it is wrongful. *Fitz. Distress* 21.

*Of carrying off  
goods to  
prevent  
distress.*

If any tenant, lessee for life or lives, years, at will, sufferance or otherwise, fraudulently or clandestinely convey away, or carry off or from the premises his goods or chattels to prevent distress, the landlord or lessor, or person by him lawfully impowered, within 30 days, next ensuing such conveying or carrying off, may distrain them wherever found; provided they be not sold *bona fide*, and for a valuable consideration before such seizure, to any person not privy to such fraud. And if any tenant or lessee fraudulently remove and convey away his goods or chattels as aforesaid, and every person wilfully and knowingly aiding or assisting

assisting such tenant or lessee in such fraudulent  
 conveying or carrying off of any part of the goods  
 or chattels, or in concealing the same, shall forfeit  
 to the landlord or lessor, double the value of the  
 goods by him carried off or concealed, to be reco-  
 vered by action of debt. Provided that where the  
 goods and chattels so carried off or concealed do  
 not exceed the value of 50*l.* the landlord, or his  
 bailiff, servant, or agent, may exhibit a complaint  
 in writing against the offenders before two or more  
 justices of peace of the same county, &c. residing  
 near the place whence removed, or where found,  
 not being interested in the lands or tenements  
 whence removed; who may summon the parties  
 concerned, examine the fact, and witnesses on oath  
 or affirmation; and in a summary way determine  
 whether the persons be guilty of the offence; and  
 inquire in like manner of the value of the goods  
 and chattels by them so carried off or concealed;  
 and upon full proof of the offence, by order under  
 their hands and seals, adjudge the offenders to pay  
 double the value of the goods and chattels to such  
 landlord, or his bailiff, &c. at such time as the said  
 justices shall appoint: And if the offenders having  
 notice of such order, refuse or neglect so to do,  
 by warrant under their hands and seals to levy the  
 same by distress and sale of the offender's goods  
 and chattels; and for want of distress, commit the  
 offenders to the house of correction, there to be  
 kept to hard labour without bail or mainprize 6  
 months, unless the money so ordered be sooner sa-  
 tisfied; provided that the person so aggrieved by  
 such order may appeal to the quarter-sessions, who  
 must give reasonable costs to either party, and  
 whose determination shall be final. Provided,  
 That where the party appealing shall enter into a  
 recognizance with one or two sufficient sureties in  
 double the sum ordered to be paid, with condition  
 to appear at such sessions, the order of the said two  
 justices shall not be executed in the mean time,  
 And where goods or chattels are so carried off or  
 concealed, put, placed, or kept in any house, barn,  
 K 4 stable,

## Distress.

stable, outhouse, yard, close, or place locked up, fastened, or otherwise secured, to prevent distress; the landlord or lessor, his steward, &c. or other person empowered to distrain (first calling to his assistance the constable, headborough, borsholder, or other peace officer of the hundred, &c. or place where suspected to be concealed, who are required to assist therein; and in case of a dwelling-house, oath being also first made before a justice of a reasonable ground to suspect that such goods or chattels are therein) in the day-time to break open and enter into such house, &c. and take and seize such goods and chattels, as if they had been put in any open field or place. *Stat. 11 G. 2. c. 19.*

As to where distress may be secured and sold, *vid. post.*

(E) *What things may be distrained.*

*General  
rule.*

**A**LL such things of which a replevin lies, and which may be known again, and restored to the owner intire, and are not *feræ naturæ*, 1 Ro. Abr. 667. as money in a sealed bag, 22 E. 4. 50. 1 Ro. Abr. 159. a cart or waggon full of corn or grain, *Ib.* 2 Hen. 4. 15. 2 Inst. 82. 1 Jo. 197. 2 Mod. 61. a horse laden with sheaves, &c. 22 E. 4. 50.

*Horse.*

A horse with the rider on him for damage feasant may be distrained, and led to the pound with the rider on his back, but not for rent. 1 Vent. 36. 1 Sid. 440. Horses, &c. drawing a cart loaden, may be severed from it, and distrained for rent-service. *Sid.* 422, 440. but otherwise for rent. *Cro. El.* 7. 8. *Mar.* 91.

*Corn, &c.*

Sheaves or cocks of corn, or corn loose in the straw, or hay in any barn, or upon any hovel, stack or rick, or otherwise, may be distrained for rent. *Stat. 2 W. & M. stat. 1. c. 5. § 3.*

Also any cattle or stock, feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to all or part of the premises demised or holden; and all sorts of corn and grass, hops,

hops, roots, fruits, pulse, or other product, growing on any part of the estate. But if after such distress of corn, &c. the tenant or lessee, his executors, &c. pay or tender the rent, together with the costs and charges of making distress, and which has been occasioned thereby, the distress to cease, and the corn, &c. to be delivered to the lessee or tenant, his executor, &c. Stat. 11 G. 2: c. 19.

## (F) *What things may not.*

**S**UCH things of which replevin don't lie. *See General rule.*

Fishes in a pond. 1 Cro. 188. Nor poultry. 2 Inst. 133.

Cattle of the plough, if sufficient distress besides. Dyer 312. 1 Inst. 47.

An anvil in a smith's shop. 14 Hen. 8. 25.

A mill-stone that is severed for picking, &c. Ibid.

Tools or instruments of a man's trade. 1 Inst. 47.

Books of a scholar. Ibid.

A man's wearing apparel. 2 Inst. 133.

A garment or cloth in a taylor's or weaver's shop. 22 Edw. 4. 40.

Sacks of corn or meal in a mill, or in a market. 1 Inst. 29, 47.

Corn growing, nor after it is ground. 18 E. 3. 4. but see before.

A horse in a smith's shop, or in a hostry or inn. Ibid.

Whilst the rider is on his back, i. e. for rent. Fitz. Rescous 14. Cro. El. 552. contra. for damage feasant. 1 Vent. 36. 1 Sid. 440.

Cattle put into B. and straying into C. for default of inclosure. Dyer 365, 317. 39 E. 3. 3.

Cattle delivered by the sheriff to the tenant in dower (for seisin of rent) for arrears of rent of the same lands. 40 E. 3. 22.

## Distress.

Any thing that is in the custody of the law, as things distrained, damage-feasant, goods taken in execution, &c. but by *stat. 8 A. c. 14.* No goods upon any tenements leased shall be taken in execution unless the party suing it out, shall before the removal of the goods, pay to the landlord, or his bailiff, all the rent, if it be not more than for one year, and if more, then the party paying one year's rent, may execute his judgment; and the sheriff shall levy and pay to the plaintiff, as well the money paid for rent, as the execution money.

By *Stat. de Distric. Scac. 51 Hen. 3.* None shall be distrained by the beasts that gain, (*i. e.* manure his land) nor by his sheep, but until another distress or chattels sufficient be found, except for damage feasant.

(G) *In what cases several distresses may be.*

**T**WO distresses can't be taken for one and the same rent, *Cio. El. 13. Mod. 7.* except there be not sufficient at the time of the first taking. *Lut. 1536.* But by *stat. 17 C. 2. c. 7.* where the cattle, &c. distrained are not of the full value of the arrears for which they are distrained, the party, his executors or administrators, may from time to time distrain again for the residue of the arrears, and by *stat. 19 C. 2. c. 5.* this extends to *Wales*, and the counties palatine. And where the distress dies in the pound, the distrainer may distrain again; *aliter*, where it escapes, unless it appear that the plaintiff was in no default. *Salk. 248.*

(H) *Of excessive distresses.*

**N**O distress taken for homage or fealty to be said excessive, because of the high esteem thereof in law. *27 Aff. pl. 51. 28 Aff. pl. 50. 43 E. 26. 4 Rep. 8. b. 2 Inst. 107.*

4. Horses and a cart for 2 s. rent, not excessive because of the intirety, they being fixed to the cart. *8 Hen 4. 15. 20 E. 4. 3. 2 Vent. 183.*

2 Inst.



2 *Inst.* 107. And so of a fold or flock of sheep, where they are intire, and can't well be separated. 20 *E.* 4. 3. But if 40 several sheep are taken for 2 *d.* or 16 oxen for 9 *d.* this is excessive, because they are several. 41 *E.* 3. 26.

If the landlord distrain a horse or an ox for 1 *d.* if no other distress were on the land, it is not excessive; but otherwise if sheep, swine, &c. were there are at the same time, because they were of less value. 2 *Inst.* 167.

Persons taking excessive distresses to be grievously amerced, *stat.* 52 *Hen.* 3. c. 4. but an indictment or information will not lie. *Vid.* 1 *Mod.* 71, 288. 1 *Lew.* 299. *Ray.* 205. 1 *Vent.* 104.

If the lord or another distrain several times for rent or services where none in arrear, the tenant may have an assize *de seivent* distress. *F. N. B.* 178. *I.* But if he distrained for homage or fealty so often, that the tenant could not manure his land, the tenant cannot have it. 4 *Rep.* 8. *b.*

## (I) How a distress is to be used, &c.

**T**Hings distrained that have life, ought to be put in a pound overt, that the owner may feed them, for the keeping is at his peril. 1 *Inst.* 47. *b.* 2 *Inst.* 106. yet one may put them in a pound covert or close; but then the distrainer must keep them at his peril, without having any satisfaction for his trouble or charge. *Ibid.*

Dead goods or such as may take damage by wet or weather, to be impounded in a house, or other pound covert, or close; the distrainer is answerable if he impound them in a pound overt. *Ibid.*

By *stat.* *Marlb. & Westminster.* 1. a distress is not to be driven out of the county.

And by *stat.* 1 & 2 *P. & M.* c. 12. no distress of cattle to be driven out of the hundred, rape, wapentake or lath; where taken, except to a pound overt within the shire, not above 3 miles from the place where taken: And no goods distrained at one time shall be impounded in several places,

*Where distress is to be put.*

*See Ld. Raym.* 55. 2 *Str.* 1272.

## Distress.

places, whereby the owner shall be constrained to sue several replevins, on forfeiture of 5 *l.* to the party grieved and treble damages. And no person shall take for poundage above 4 *d.* on forfeiture of 5 *l.* and the money above the 4 *d.*

Driving into a city or vill, that is a county of itself, tho' within the same county, is a driving out of the county. 3 *Lev.* 48. 2 *Inst.* 131, 191. *Goldsb.* 100, 101. *Godb.* 11. And if impounded in several liberties, 'tis an offence within the words *several places* of the last statute, *vid.* *Noy* 52. *Dyer* 177. *b.* but where three persons distrain a flock of sheep, and severally impound them in three several pounds, they shall only forfeit one 5 *l.* and one treble damages. *Cro. El.* 480. *Mo.* 455. *Goldsb.* 45. *Noy* 52. but *quere* as to *Noy* 62. And whether the distress be of live things or dead, they can't be impounded in any pound, either overt or covert, above three miles from the place of taking, and that within the same county. 1 *Inst.* 47.

If one distrains a cow, he cannot milk her; and if she perish for not milking, &c. the distrainer may distrain again. *Cro. Jac.* 147. *Yelv.* 96. *Noy* 119. 1 *Ro. Abr.* 673, 879. *Cro. El.* 162. *Cro. Car.* 148. 2 *Leon.* 174.

A man cannot work a distress because he has no property therein, nor possession *in jure*, but only a bare power by act of law to take it as a pledge or security, &c. *Owen* 124. *Dyer* 280. So if one has a distress on a return irreplevifable, yet he cannot work it, *Owen* 124. But cattle taken upon a *Withernam* may be worked and used; as, if they be cows they may milk them, or if oxen, or horses, reasonably work them; because they are delivered in lieu of the parties own cattle. *Owen* 46. 1 *Leon.* 20. 3 *Leon.* 235, 236.

## (K) Of notice of distress, and sale thereof.

**I**F a lord take a distress for an amercement in a leet, he may impound or sell it at pleasure. 8 *Rep.* 41. 1 *Ro. Rep.* 76. *Noy* 17.

A distress taken in a court leet may be sold, 3 Hen. 7. 4. so may a distress taken for a fine for not repairing highways. Stat. 18 El. c. 10.

Where a statute says, That a penalty shall be levied by distress, a power to sell is thereby also given, without further words, 2 Jo. 25. 6 Mod. 83. but if the officer sells on credit, when he might for ready money, he is immediately chargeable to the party for whom the distress is taken. 6 Mod. 83.

Distress taken off the premises within 30 days after the goods, &c. carried off, may be sold in such manner, as if distrained upon the premises. Stat. 11 G. 2. c. 19.

And any person taking a distress for any kind of rent may impound or otherwise secure the distress of what kind soever it be, in such place or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing it; and appraise, sell, and dispose of the same upon the premises, in like manner as off the premises, by stat. 2 W. & M. or 4 G. 2. And any persons whatsoever may come and go to and from such part of the premises, in order to view, appraise, and buy, and also to carry off or remove the same, on account of the purchaser thereof. And if pound-breach, or rescous be made of the goods and chattels or stock distrained for rent, and so impounded or secured, the same remedy as by the said statute. *Ibid.*

And by the said stat. 2 W. & M. where goods shall be distrained for rent due upon any lease or contract, and the tenant or owner of the goods shall not within five days after such distress, and notice thereof, (vid. *Form in the first part*) with the cause of such taking, left at the mansion house, or most notorious place of the premises charged with the rent, replevy the same; the person distraining may, with the sheriff and under-sheriff of the county, or with the constable of the hundred, parish or place, where, &c. cause the distress to be appraised by two sworn appraisers, whom such sheriff,

*Notice.*

## Distress.

sheriff, &c. shall swear to appraise them truly, and after appraisement, may sell the same towards satisfaction of the rent and charges of the distress and appraisement, leaving the overplus, if any, in the hands of the sheriff, &c. for the owner's use. And for rent sheaves or cocks of corn, &c. may be distrained and secured where found till replevied, or in default thereof appraisement to be sold. And upon any pound-breach, or rescous, the person aggrieved shall in a special action on the case recover treble damages and costs against the offenders, or against the owner of the goods if they come to his use. *Stat. 2 W. & M. 1. c. 5.*

(L) *Actions relating to distresses.*

**W**HERE distress shall be made for rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent; the distress itself shall not be therefore deemed unlawful, nor the party making it a trespasser *ab initio*; but the party aggrieved may recover full satisfaction for the special damage sustained, in action of trespass, or on the case at the plaintiff's election. Where the plaintiff recovers he shall be paid full costs of suit, and have the like remedies for the same as in other cases of costs. Provided, That no tenant or lessee shall recover, if tender of amends be made by the party distraining before such action brought. And in such actions relating to such distress, sale or disposal, the defendant may plead general issue, and give the special matter in evidence; and if the plaintiff be nonsuited, discontinue, or have judgment against him, the defendant shall recover double costs. *Stat. 11 G. 2. c. 19.*

If distress or sale be made where no rent due, the owner of the goods may by action of trespass or upon the case recover double the value of the goods distrained with costs. *Stat. 2 W. & M. 1. c. 5.*

Ejectment.

## Ejectment.

B. R.

**A**Ttornies that deliver any declaration in ejectment, are to sue out a *latitat* (or I suppose if in Middlesex, a *bill of Middlesex*) against the casual ejector, and file common bail before judgment be signed against him. *Reg. M.* 33 C. 2.

Where defendant by rule of court confesses lease, entry and ouster, for so much of the premises in the declaration mentioned as are in the possession of the defendant or his under-tenants; the attorney for the defendant must immediately deliver to the plaintiff's attorney, a note in writing of the tenements so being in the possession of the said defendant or his under-tenants. *Reg. T.* 15 C. 2.

A general rule to answer to be given with the clerk of the rules in ejectment, before motion against the casual ejector. *Reg. T.* 18. C. 2.

C. B.

**O**N delivery of declarations in ejectments in *London* and *Middlesex*, notice must be given to the tenants in possession, that they appear by attorney in court the next term (*but in London or Middlesex the first day of the next term*) after the delivery of the declaration; and the plaintiff to take nothing by motion for judgment against the casual ejector, for default of having appeared, unless motion be made within a week next after the first day of every *Michaelmas* and *Easter* term; and within 4 days next after the first day of every *Hilary* and *Trinity* term. *Reg. T.* 32 C. 2. *Sed Q*

Declaration in ejectment not to be taken in or received by any secondary, unless signed by a serjeant at law, and delivered by himself to one of the secondaries in open court. And the secondaries in the morning next after the end

of every term, and at all other times when required, to produce and shew to any person who demands



mands the same, the alphabetical paper of ejectments moved and delivered into court in each term. *Reg. M. 2 G. 2.*

Where half a year's rent shall be in arrear, the landlord, having a lawful right to re-enter for non-payment, may serve a declaration in ejectment without a formal demand or re-entry, or, in case the same cannot be legally served, affix such declaration on the door of the demised messuage, or some other notorious place of the lands; which shall be deemed a legal service; and on proof that half a year's rent was due before the said declaration was served, and no sufficient distress on the premises, the lessor shall recover judgment and execution as fully as in case a formal re-entry had been made; and if the lessee shall suffer judgment to be recovered on such ejectment, and execution, without paying the arrears and costs, and without filing a bill within six months after execution, he shall be barred from all relief in law or equity, other than by writ of error, and the lessor shall hold the demised premises discharged from such lease. *Stat. 4 G. 2. c. 28.*

## Error.

## K. B.

**W** Rits of error returnable before the justices of C. B. and barons *d. Scaccario*, are forthwith to be delivered to the clerk of the errors; and no execution to be paid until such writ of error be so delivered. *Reg. E. 36 C. 2.*

Plaintiff in error, to put in bail within 4 days after the delivery of the writ to the clerk of the

errors,

## C. P.

**W** Rits of error to be immediately delivered to the clerk of the errors, and till then execution is not obliged to stay, nor where special bail is required, unless the plaintiff in error within 4 days after delivering thereof puts in bail according to law, and obtains a *super fideas* thereupon. *Reg. M. 28 C. 2.*

Before

## K. B.

errors, or defendant may proceed to execution. *Reg. E.* 36 C. 2.

After putting in special bail, notice thereof to be given immediately to the defendant in error or his attorney. *Reg. M.* 5 *W. & M.*

And if the defendant does not except against such bail within 20 days after such notice, the bail to be allowed. *Ibid.*

*Note*; The bail on a writ of error must pay the condemnation; the rendering the principal will not save them. *Cro. Jac.* 402.

If the plaintiff in error, after errors are assigned in the *Exchequer* chamber, intends to argue the same, he must give ten days notice thereof to the clerk of the errors in the same court before they shall be argued by council on either side; and the attorney for the plaintiff in error, shall deliver four copies of the book to the justices of the *Common Pleas*, and the attorney for the defendant shall deliver four copies

## C. P.

Before writ of error allowed, the defendant in the original action must put in bail, not only to appear and answer in the new action to be commenced by the plaintiff for the cause mentioned in the first action, but also to satisfy the condemnation, if the plaintiff begins his suit before the end of two terms next after allowing the writ of error. *Reg. M.* 12 G. 1.

Where bail is filed on a writ of error, it must be perfected in 4 days after exception, or the clerk of the errors must *Non Prof.* the writ. *Reg. M.* 6 G. 2.

And after the writ is duly allowed, and a *supersedeas* thereupon obtained, no execution to be made for not transcribing the record in *B. R.* without a certificate in writing from the clerk of the errors, that the plaintiff in error made default in transcribing the record in *B. R.* according to the rule of court first of course given. *Reg. M.* 28 C. 2.

## Estates of Inheritance.

K. B.

C. P.

copies to the barons of  
the *Exchequer* four days  
before the hearing of  
the cause. *Reg. E.* 33  
*Car.* 2.

### Escape.

**W**HERE defendant being in the custody of the marshal upon mesne process, is taken and detained in custody of any sheriff by a judge's warrant, for an escape from the custody of the said marshal, the plaintiff must declare against the defendant in the custody of such sheriff, before the end of the second term after being so taken and detained, otherwise a *superfedeas* may be made for the defendant. *Reg. T.* 6 *A. B. R.*

If the prisoner escapes before he has been two days in the custody of the marshal upon a *Ca. Sa.* and the *Ca. Sa.* is not returned, the bail are not liable; but otherwise if the *Ca. Sa.* is returned. *M.* 3 *A. B. R.*

## Estates of Inheritance.

(A) *Fee-simple.*

1st, *Its nature and extent.*

*What.*

**A**N estate in fee-simple, (*i. e.* a lawful or pure inheritance) is where a man hath lands or tenements to hold to him and his heirs for ever. *Co. Lit.* 1.

None can have a greater estate of inheritance than this; estates in tail, and all other particular estates are derived from it.

*Kinds.*

A *fee simple*, or rather inheritance, is *absolute* or *qualified*.

An *absolute fee* has no bounds or limits annexed to it, and is an estate to a man and his heirs absolutely for ever.

A *qualified fee* is such as has some collateral matter annexed to it, whereby it is made by some means determinable. 1. *By condition*, as when such condition is not performed, but till then it is as it were absolute. 2. *By limitation*, as when a grant is made to *A.* and his heirs, tenants of the manor of *D.* who have an absolute estate only so long as they continue tenants of that manor. *Wood's Inst.* 121.

2dly, *The quality incident thereto.*

**I**N its very nature it is transmissible.

I. *To the successor* in bodies corporate by a right of succession, and the rule of the succession is directed by the nature of the corporation.

II. *To the heir*, in the case of persons natural, by descent or hereditary succession, which is either by the common law or by custom. Vid. tit. *Descents*.

III. *To any other person*, 1<sup>st</sup>, By alienation or transferring the property, by deed or conveyance. Incorporate persons, ideots, madmen, deaf, dumb and blind, minors may purchase an estate, and so may all other reasonable creatures. But some have only a capacity to purchase and not to hold; as aliens, felons after felony committed and afterwards attainted, corporations purchasing in mortmain without licence, &c. here the king shall have the lands by his prerogative. And some to purchase, and either hold or not hold, at the election of themselves or others: As infants or minors, who may agree or disagree when they come of age; lunatick or married women, whose heirs or husbands may agree or disagree to it; and a married woman herself may wave the same after her husband's death, tho' the husband agrees to it. So may her heir, if she did not agree to it after the husband's death. And some can neither purchase nor hold, as parishioners or inhabitants, or churchwardens, commoners,

*Who may purchase.*

- Caution.* moners, and papists. Great care ought to be taken in the purchase of an estate in fee simple, lest it should be incumbered with judgments, statutes merchant or of the staple, recognizances, mortgages, wills, feoffments, fines, bargains and sales, amerciaments, dowers, jointures, &c. And every man may convey his estate, except men attainted of treason, felony, *præmunire*, aliens born, ideots and lunatick, married women, infants, and men under duress (a). Or, 2dly, *By will*, all persons except married women, infants, ideots, or *non compos mentis*, having a sole estate in fee simple, or in coparcenary, or in common, in fee simple, may devise the same to any person or persons (*except bodies corporate*.) (b) Also reversions in fee simple, estates for one's own, or another's life, or for years are deviseable by will (c). To those that intend to devise lands by will, these cautions may be necessary, 1. To make it by good advice, when in perfect health. 2. If it concerns inheritance, to make it indented, and to leave one part with a friend, lest it be suppressed after the death of the devisor. 3. To be attested by three witnesses. 4. To be written in one hand and on one piece of parchment or paper, if possible. 5. The devisor's hand and seal to be set to it. 6. If it be in several parts, the devisor's hand and seal, and the names of the witnesses to be subscribed to each part. 7. If there be any interlineation or rasure in it, to make a memorandum of it. 8. To make a revocation of a will, make it in writing by good advice (d).

(B) Fee-

(a) *Wood's Inst.* 223, 224.(b) *Stat.* 32 *Hen.* 8. c. 1. and 34 *Hen.* 8. c. 5.(c) *Wood's Inst.* 295.(d) 3 *Rep.* 36.



(B) *Fee-tail.*

1st, *Its nature and extent.*

**A**N estate in fee-tail is an inheritance restrained to the heirs of the body or bodies of some particular person or persons begotten or to be begotten. *Fee-tail what.*

Fee-tail is either general or special.

*Kinds.  
General.*

1. General, where an estate is given to a man and the heirs of his body; the heirs male of his body, or the heirs female of his body; the like where given to a woman and the heirs of her body. It is called tail-general, because if the man hath issue by several wives, every one of these issues by possibility may inherit, because they are issues of his body, and it is the same if the wife have divers husbands. *1 Inst. 19. b. 20. a.*

2. Special, where it is given to a man and his wife, and the heirs of their two bodies begotten. Is it called special tail, because if the wife dies, and he marries and hath issue, such issue cannot inherit; the like of the issue of the second husband. *1 Inst. 20. b. 21. a.* *Special.*

2d, *The qualities incident to such an estate.*

1. The hereditary transmission, which is directed by the rules of descent. See tit. *Descents*. All lands of inheritance, and all inheritances favouring of realty, may be intailed, as all advantages and profits whatsoever granted out of lands, or which concerned lands or certain places. Therefore rents, estovers, commons, &c. uses, offices, dignities, which concern certain lands or places may be intailed. *Descent.*

2. The alienation of it, the tenant in tail cannot alien or charge it longer than for life, but he may bar it by *fine*, if he that has a right does not claim within 5 years after his right accrues, or by common *Alienation.*

common recovery he may bar the estate-tail, remainders and reversions.

*Estates of freehold only.*

(C) *An estate in tail after possibility of issue extinct.*

*Definition.* **T**HIS estate is where lands and tenements are given to a man and his wife in special tail, and one of them dies without issue, the survivor hath an estate in tail when there is no possibility of issue. And if they have issue, and the issue die without issue, so that there is not any issue alive which may inherit by force of the intail, the survivor of the donees hath an estate in tail after the possibility of issue extinct (a).

*Who can have it.*

None can have this estate but one of the donees or a donee in special tail; for a donee in general tail may by possibility have issue (b).

(D) *An estate by the curtesy of England.*

*Definition.* **T**HIS estate is where a man marrieth a woman seised in fee-simple, or in fee tail general, or seised as heirs in special tail, and hath issue by her, male or female born alive, evidenced by motion, crying, &c. which by any possibility might inherit, altho' it lives or dies, yet if the wife dies, the husband shall hold the land during his life by the curtesy of England (c).

*Where it may be.*

One may be tenant by the curtesy of a castle for the defence of the realm, a common *fans* number, &c. But not of a bare right, title, use, or of a reversion or remainder expectant upon an estate of freehold; unless the particular estate is determined during the coverture; nor of a seisin in law; but of an equitable trust he may. *Wil. Rep.* 108.

3 *Wil.*

(a) *Co. Lit.* 27. b.

(b) *Ib.* 28. b.

(c) *Ib.* 29. a. 30. b.

3 *Wil. Rep.* 134. 2 *Vern.* 324, 536. But if a wife dies before a rent in fee becomes due, or in the case of an advowson before the church becomes void, the man shall be tenant by the curtesy, tho' the wife had only a seisin in law; because he could by no industry attain unto any other seisin. A seisin in deed is required in other cases (a).

Four things must concur (tho' not necessarily at one time) to make an estate by the curtesy, viz. marriage, seisin of the wife, issue, and death of the wife (b).

(E) *An estate in dower.*

**A**N estate in dower, is where a man is seised of lands and tenements in fee simple, fee-tail general, or as heir in special tail, and marries a wife and dies, and the wife by the common law, after the death of the husband, hath during her life the third part of such lands and tenements as were her husband's, at any time during the coverture; whether she hath issue by him or no, so that she be above 9 years of age at his death (c).

*Definition.*

Three things therefore are requisite to intitle to dower, marriage, seisin, and death of the husband. There must be no divorce *à vinculo matrimonii* (from the bond of marriage) but a separation *à mensâ & thoro* (from bed and board) only does not destroy the bond of marriage (d). The husband must be seised one way or other, at some time during the coverture, for the wife shall be endowed of a seisin in law (d).

*Things requisite to intitle to dower.*

There must be an assignment of dower at the common law, either by the sheriff or by the king's writ, or by the heir or other tenant of the freehold, by consent amongst themselves (e).

**Of**

(a) *Wood's Inst.* 125. (b) *Co. Lit.* 30. a.

(c) *Lit.* 36. *Co. Lit.* 30. b. 4 *Rep.* 22.

(d) *Co. Lit.* 31. a.

(e) *Ib.* 34. b. 35. a.

## Of Jointures *which supply the place of dower.*

*Jointure  
what.*

A Jointure is a competent livelihood of freehold lands or tenements, &c. for the wife, to take effect presently in possession or profit after the death of the husband, for the life of that wife at least, if she herself is not the cause of the determination or forfeiture of it; as where an estate is settled *durante viduitate* (during her widowhood) and she marries (a).

*Where a  
jointure  
may be  
waived,  
and dower  
refused.*

This definition of a jointure is made with respect to the statute of 27 Hen. 8. cap. 10. § 6. which enacts that where an estate made in possession or use to husband and wife and his heirs, or to the heirs of their two bodies, or one of their bodies, or to them for their lives, or for the wife's life, for her jointure, she shall not have dower. Howbeit, upon a lawful eviction of that jointure she shall be endowed according to the common law. But such jointure being made after marriage, the wife (after her husband's death) may refuse it, and have her dower, unless such jointure be made by act of parliament.

This statute does not extend to copyholds (b).

A jointure may be made either before or after marriage; if before, the wife cannot wave it and claim her dower; but if after, she may; but if a jointure is made before marriage, and after the husband and wife alien them by fine, she shall not be endowed of any other lands of her husband; otherwise if it was made after marriage (c).

*When to  
enter into a  
jointure.*

A wife may enter into a jointure after her husband's death, and has not occasion to bring a real action as in case of dower; neither is it forfeited by the treason of her husband as in dower (d).

And

(a) *W. Inst.* 127.  
§ 54.  
§ 37. a.

(c) *Co. Lit.* 36. b.

(b) *Coke's Copyholder*,  
(d) *Ibid.* 36. b.

And notwithstanding dower or jointure, the wife shall have all her chattels real and bonds again, unless the husband altered the property in his lifetime; also her proportion of chattels real and personal upon an administration and distribution, if the husband dies intestate, and likewise all convenient apparel suitable to her character (a).

*What a wife is entitled to besides dower or jointure.*

(F) *An estate for life.*

**T**HIS is where a man hath lands and tenements for the term of his own life, or the life of another; or for both his own and another man's life (b).

*Definition.*

A lessee for life may take reasonable estovers upon the land unless retained by agreement (c).

*Estovers.*

A lease for 99 years, &c. determinable upon a life for lives, is not a lease for life or lives, or a freehold, but a lease for years, or a chattel determinable upon life or lives (d).

*Estates less than freehold.*

(G) *An estate for years.*

**A**N estate for years (or tenancy for years) is where a man lets lands or tenements to another for a certain term of years (e).

*Definition.*

A tenant for half a year or quarter of a year is said to be a tenant for years (f).

The tenant (or his executors or administrators if he die) may enter immediately by force of the lease, tho' the lessor dies (g).

*When tenant may enter.*

This estate is but a chattel, therefore it goes to the executors or administrators.

*To whom it goes.*

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(a) *Wood's Inst.* 128. (b) (c) *Co. Lit.* 41.  
 b. (d) *Wood's Inst.* 129. (e) *Co. Lit.*  
 43. a. b. (f) *Lit.* § 67. (g) 1 *Co.*  
*Lit.* 51. b.  
 Vol. II. L (H) *An*



(H) *An estate at will.**Definition.*

**A**N estate at will (or tenancy at will) is where lands and tenements are let by one man to another, to have and to hold to him at the will of the lessor; which lease implieth it to be also at the will of the lessee, for every lease at will must be at the will of both parties (a).

By force of this lease the tenant is in possession, but he hath no certain or sure estate, tho' a chattel real; so that the landlord may put him out when he pleases (b).

Except by the custom of *London*, where a tenant at will under the yearly rent of 40*s.* shall have a quarter's warning (c).

(I) *An estate at sufferance.**Definition,  
&c.*

**T**HIS estate is when a man comes on an estate, or enters by lawful lease, and keepeth his possession after his lease is expired, and so holdeth over by wrong; as a tenant for term of years holding over his term, &c. There is a great difference between a tenant at will, and a tenant at sufferance, for the first is always by right, the other by wrong (d).

(K) *An estate by copy of court-roll.**Definition.*

**T**HIS is an estate in land and tenements, which by an immemorial custom of a manor the tenants within the said manor hold to them and their heirs in fee-simple, fee-tail, or for term of life, or years at the will of the lord according to the custom of the manor (e)

(a) *Co. Lit.* 55. a.(b) *Ibid.*(c) 2 *Syd.* 20.(d) *Co. Lit.* 57. b.(e) *Wood's Inst.* 135.

(L) *Estates in antient demesne.*

THESE are such lands as were antient demesnes of the crown, and in the possession of *Edward the Confessor* and *William the Conqueror*. *Definition.*

The lord in antient demesne and his tenants are exempted from taxes by parliament, except especially named, from toll and passages for goods bought and sold in fairs and markets, from expences to knights of the shire; the tenants are not to be sued out of the court of that manor, and shall not be put upon juries out of antient demesne, nor appear at any other court, because by their tenure they are intended to apply themselves to the manurance and husbandry of the king's demesnes, and to reap the corn, &c. for furnishing his household with necessary provisions. And therefore for those lands they have yet this privilege, tho' the original cause of it is ceased, and their services changed into money. But for buying and selling wares, &c. that don't rise upon the manurance and husbandry of those lands, or for other lands held by the common law, they have not this privilege (a). *Privileges incident to this state.*

*Estates which may be either inheritances, freeholds or less than freeholds.*

(M) *An estate upon condition.*

THIS is an estate granted in fee-simple, fee-tail, for life or years, with a quality annexed by him that hath the estate, interest or right to the same, whereby it may be either defeated, enlarged or created, upon an incertain event (b).

This estate is either upon condition in deed, or condition in law.

(a) *Wood's Inst.* 141, 142.  
*Lit.* 201. a. 202. b.

(b) *Ib.* & Co.

## Estates.

1. A condition in deed is expressed by the party in legal terms.

2. A condition in *law* is that which the law intendeth or implieth without exprefs words in the deed; as the grant of an office for life, is upon condition implied that the grantee shall do his duty, or otherwise the grantor or his heirs may oust him, and grant the office to another (a).

### (N) *An estate by statute merchant.*

*Definition.* **T**HIS is where a man possesses land which was levied by virtue of a statute merchant; and is to be held to the obligee, his heirs or assigns, till the debt on such statute is satisfied.

### (O) *An estate by statute staple,*

*Definition.* **I**S of the like nature as by statute merchant.

### (P) *An estate by elegit,*

*Definition.* **I**S where a man possesses a moiety of the lands or tenements of another delivered to him by the sheriff by virtue of an execution called an *elegit*, to be holden till the debt or damages for which such execution was awarded is paid or satisfied.

### (Q) *An estate in lands devised to executors.*

**T**O be sold.

When an estate in lands is devised to executors to be sold, the descent is taken away by the devise, and the estate is vested in the executors, and they may enter and take the profits, and sell it according to the devise, and the sale must be as soon as possible after the testator's death, because the  
mean

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(a) *Co. Lit.* 232. b. 233. a.

mean profits before the sale is not assets to pay debts. But if devised that the executor shall sell the land, there it descends in the mean time to the heir, and he may enter and take the profits until the sale is made, because the executors have only a power and no profit, and may sell the land at any time (a).

Where land is devised to two executors to be sold, and one dies, the survivor may sell the land, because the trust shall survive in like manner as the estate; but where the executors have only a power to sell, they must all join, and if one dies, the survivor can't sell (b). And where devised to be sold by executors, and one or more refuses, the residue may sell (c). So may executors that have only a power; but the sale in neither case can be to him that refuses (d).

(R) *An estate in coparcenary,*

**I**S where two or more have equal portion in the inheritance of their ancestors. *Definition.*

Coparceners are either by the common law or *Division.* by custom.

1. *By the common law*, where one is seised of lands or tenements in fee-simple, or fee-tail, hath no issue but daughters, or dies without issue, and leaves only sisters, aunts, or other females of kin in equal degree, and the lands and tenements descend to such daughters, &c. and they enter, then they are parceners or coparceners, and but as one heir, and have but one freehold; yet one may sell her part to the other; and if one dies, her part shall descend to her issue, be it son or daughter (e).

2. *By custom*, where lands are in fee-simple, fee-tail, of the tenure of gavel-kind, descend to all the

(a) *Co. Lit.* 336. a. (b) *Ibid.* 112. b. 113. a.

(c) *Stat.* 21 Hen. 8. c. 4. (d) *Co. Lit.* 113. a.

(e) *Wood's Inst.* 148.

## Estates.

sons by custom. Here the descent is to men as it was to women by the common law (a).

They are compellable to make partition, or they may make partition by consent.

*How created.*

This estate is always by descent.

### (S) *An estate in jointenancy,*

*Definition.*

**I**S where one is seised of lands or tenements, and makes a feoffment to two or more, and their heirs; or makes a lease to them for life; or where two or more have a joint estate in possession in a chattel real or personal, or a joint estate in a debt, duty, covenant, contract, &c. and the part of him that dies does not go to his executor, but to the survivor, except the stock and debts of two joint-merchants, they go to the executors of him that dies by the *law merchant* for the encouragement of trade (b). But joint tenants usually covenant not to take by survivorship.

*How it goes.*

*Power of joint-tenants.*

A joint-tenant may give, or lease out, &c. he may even make a lease to his companion. This estate is created by purchase only (c).

*How created.*

*Partition.*

Joint tenants are compellable to make partition (d), and one, or his executors or administrators, may have an action of account against the other as bailiff or receiver, if he receives more than his share, or against his executors or administrators (e).

### (T) *An estate in common,*

*Definition.*

**I**S where two or more have lands or tenements in fee simple, fee-tail, for life or years (by several titles and several rights, and none of them knoweth his own part, but takes the profits in common; as if there be two joint tenants which claim by one and the same title, and one sells his part, the person to whom it is sold, and the other joint-

(a) *Lit.* 265.

(b) *Wood's Inst.* 149. *Vern.*

217. (c) *Ibid.*

(d) *Stat.* 32 Hen. 8. c.

(e) *Stat.* 4 A. c. 16.



joint-tenants are tenants in common because they claim by several titles: Also this estate may be of chattels real and personal.

This estate may be by descent, purchase, or prescription, and does go by survivorship. *How created and goes.*

Tenants in common are compellable to make partition, and one may have an action against the other as bailiff, &c. (*as above.*)

(U) *An estate in remainder,*

**I**S the residue of an estate in land depending upon a particular estate, and created together with the same. *Definition.*

A particular estate is that which is derived from a general and greater estate; as if a man seized in fee letteth lands or tenements for a term of years, the remainder over to another for life, in tail or in fee; here is first a particular estate for years, created out of a fee, and afterwards the residue disposed of, which we call the remainder; tho' the particular estate, and all the remainders make but one estate in law (*a*).

No remainder can be of a chattel personal, as to give my study of books to one for life or years, remainder to another; but if I give the use of them to one for life, and then those books to another, it would have been good (*b*). *Chattels.*

(W) *An estate in reversion,*

**I**S the residue of an estate left in the grantor, after some particular estate granted away; always continuing in him that granted the particular estate, or where the particular estate is derived out of his estate. As in a gift in tail, the reversion of the fee-simple is in the donor; in a lease for life, or years, the reversion is in the lessor. A reversion may commence after a remainder, where one dis-

(a) *Wood's Inst.* 151.

(b) *Noy Max.* 31.

## Estates.

poseth of a less estate than that whereof he was seised at the time of such disposition (a).

### *Incorporeal estates.*

#### (X) *A dignity,*

**I**S a title of nobility.

#### (Y) *An advowson,*

*What.*

**I**S a right of presentation or collation to a church.

*How  
granted.  
Kinds.*

It may be granted by deed or testament, and it is assets in the hands of heirs or executors.

Advowsons are either *appendant* upon a manor, lands or tenements, and pass in a grant of the manor as incident (b). Or *in gross*, which is a right subsisting by itself belonging to a person, and not to a manor, lands, &c. And they are, 1. *Presentative*, as where the patron does present or offer his clerk to the bishop of the diocese. 2. *Collative*, as where the advowson is lodged in the bishop, when he is the original patron, or when he gains a right by lapse. 3. Or *donative*, as when the patron, by a single donation in writing, puts the clerk into possession without presentation, institution, or induction.

#### (Z) *Tithes,*

*What.*

**A**RE the 10th part of the increase yearly arising from the profits of lands, stocks upon lands, and the industry of the parishioners payable for the maintenance of a parish priest by every one that hath things titheable, if he cannot shew a special exemption (c).

*Kinds.*

They are of three kinds.

1. *Prædial*

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(a) *Co. Lit.* 22. b. 142. b.  
a. (c) *Wood's Inst.* 163.

(b) *Co. Lit.* 307.

1. *Predial* are such as immediately arise from the land, either by manurance or of its own nature, as grain of all sort, hay, wood, fruits, herbs, &c. These are due without deducting the costs, and are payable when they arise (a).

2. *Personal* are such as arise only from the labour and industry of man (other than common day-labourers) being the tenth of his clear gains in his trade or profession after charges deducted. These are paid when they are due by custom only; but scarce paid any where in *England*, unless for mills, or fish caught at sea; and then payable where the party hears divine service, and receives the sacraments (b).

3. *Mixt* are those that arise not from the ground, but from cattle and other things that receive their nourishment immediately from the ground, as colts, calves, pigs, wool, lambs, milk and cheese from cows, chickens or eggs, &c. and are payable when they arise (c).

If a parishioner sows his lands, and before severance the parson dies, the successor shall have the tithes; but if the corn, &c. is cut down, the executor of the parson shall have them, tho' the corn, &c. was not actually tithed (d).

### (AA) Tenures and services.

**A** Tenure is the manner whereby lands and tenements are holden of a lord; and the service that the tenant owes to the lord. *Wood, B. 2. c. 2.* *Tenure what.*

All tenures of any honours, manors, lands, tenements or hereditaments, held either of the king or any other person, are turned into free and common socage. But rents certain, heriots, or suit of court, &c. are not taken away. *Stat. 12. C. 2. c. 24.*

(a) *Wood's Inst.* 163.

(b) *Ibid.*

(c) *Ibid.*

(d) *Wood's Inst.* 164.

(BB) *An annuity.**What.*

**A**n annuity is a yearly payment of a certain sum of money granted to another in fee-simple, fee-tail, for life or years, charging the person of the grantor only (*a*).

No freehold is charged therewith, which shews that a rent-charge is preferable to an annuity.

(CC) *A common.**What.*

**A** Common (because it is common to many) is a profit that a man hath in the land of another, and is of different kinds.

*Kinds.*

I. *Common of pasture*, is a right of putting beasts to pasture in another man's soil, and is of four kinds. 1. *Appendant*, which is a right belonging only to one's arable land, of putting beasts commonable into another's ground to feed there. Commonable beasts are those which are employed for the maintenance of the plough, as horse or ox, and for kine and sheep to compost the land. 2. *Appurtenant*, which is belonging to an estate for all manner of beasts commonable or not commonable, as hogs, goats, geese, &c. and may be to a house, meadow or pasture, as well as to arable land. 3. *By reason of vicinage* (*neighbourhood*) which is a sort of common appendant, and is where the tenants of two lords (which are seised of two towns lying next to one another) have used time out of mind to have common promiscuously, and proportionably to their extent of common on both sides for all manner of beasts commonable. 4. *In gross*, which is a liberty of commoning conveyed alone without land by deed, or gained by usage, time out of mind. So that *common appendant* can't be *in gross*.

II. *Common of piscary*, is a liberty of fishing in another man's waters.

III. *Common*


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(a) *Wood's Inst.* 199.

III. *Common of turbary*, is a liberty to dig turf in another's ground, or in the lord's waste. It must be appendant to a house, not to land; for turfs are to be burnt in a house (a). It may also be appurtenant or in gross.

IV. *Common of estovers*, when restrained to woods, is a right of taking wood out of another's wood for house-bote, plough-bote, and hay-bote. *House bote* is a right of taking timber to build or repair the house, or wood to burn in the house, which is also called *fire-bote*. *Plough-bote* is a right to take wood to repair ploughs, carts, harrows, and for making rakes, forks, &c. *Hay-bote* or *hedge-bote* is a right to take wood to repair hedges, pales, gates and stiles.

(DD) *A way,*

**I**S a right of going over another man's ground, *What.* and is of several kinds.

1. *A private way*, is a private passage from one place to another, as from a house to a church, to a private house, a village, or to the fields. This is to be repaired by the village or hamlet, or sometimes by a private person; and if straitned, or if a bridge which another ought to repair, an action on the case lies, but not an indictment. 2. *A common highway*, is that which leadeth from a village into the fields, the freehold and profits are in him that hath the land next adjoining, and if it be stopped, there is no remedy but by presentment or indictment. An indictment will also lie if it is a common foot-way. 3. *The king's highway*, is that which leads from town to town, village to village, &c. and is a way for all travellers (b).

(EF) *The multure of a mill,*

**I**S the toll that a miller takes for grinding corn. *What.* This toll ought to be according to the standard.

(FF) *A*

(a) 4 Rep. 37.

(b) Wood's Inst. 99, 100.



(FF) *A corody,**What.*

**I**S an allowance of meat, drink, clothing, lodging, &c. for necessary sustenance, which were assigned by the founders of religious houses, but they are turned into pensions and money at this day.

(GG) *An office,**What.*

**I**S a function, by virtue whereof a man hath some employment under the king, or under a common person or subject.

*How held.*

Offices are of inheritance in fee simple, or fee-tail, or for life, years, or at will.

(HH) *A franchise,**What.*

**I**S a royal privilege in the hands of a subject, (a) either by charter, letters patent, or prescription (b); they may be vested in bodies politick or corporations aggregate or sole, or in many persons that are not corporations (as counties, boroughs, towns) or in a single person (c).

*Kinds.*

The chief kinds are, The principality of *Wales*, the counties palatine, cinque ports, ports of the sea, gaols and coroners, corporations, manors and lordships, and leets. *The liberty to hold pleas* is to have a court of one's own, and to hold it before one's bailiff (d). *To have cognizance of pleas*, is to have a power to draw causes out of the king's courts, and is of record (e). *A bailiwick of a liberty* is exempted from the sheriff, over which the lord of the liberty appoints a bailiff to officiate in the nature of an under sheriff. *The return of writs* is.

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(a) *Finch P. 164. of Pickering's Finch. & P. 126. of Finch published by Millar.* (b) *Wood's*

*Inst. 208.*

(c) *F. N. B. 230. 2. Inst. 221.*

(d) *Finch 166.*

(e) *Ibid.*

is an answer to the courts from whence they issue, of what was done, &c. *A forest* is a territory of woody ground and fruitful pastures, privileged for beasts of venary, or of those that are gotten by hunting, or for fowls of forest, chase, and warren, to rest and abide there in safety (a). *A chase* is a privileged place for the receipt of deer and the beasts of the forest, and of a middle nature between a forest and a park. Every forest is a chase, but every chase is not a forest. It differs from a park because it is not inclosed. *A park* is a great quantity of ground inclosed and privileged for wild beasts of chase. *A warren* is a liberty for preservation of beasts and fowls of the warren. *Fairs and markets*; every lord at the beginning of his fair, must cry and publish how long it shall be (b). Toll is always paid by the buyer, and not the seller, unless there's a custom to the contrary (c). If excessive toll is taken in a market town by the lord's consent, the franchise shall be seized; if by other officer, he shall pay double damages, and suffer 40 days imprisonment (d). Every owner of a fair or market shall appoint a toll-taker, where toll is to be taken, or a book-keeper where no toll is paid, to sit from ten in the morning till sun-set; penalty 40s. for every default (e). And horses shall not be sold or exchanged in any fair or market, unless the toll-taker, book-keeper, &c. will take upon him knowledge of the person, name, and dwelling, that shall offer to sell or exchange, or else the seller to bring one credible person to vouch for him; an entry must be made of the seller, voucher, and price, in a book to be kept for the sale of horses, and must give to the buyer a note of the content, for which he must pay 2d. offender to forfeit 5*l.* (f). There are other sorts  
of

(a) *Co. Lit.* 233.

(b) *Stat.* 2 *Edw.* 3. c. 15.

(c) 2 *Inst.* 221.

(d) *Stat.* 3 *Edw.* 1. c. 3.

(e) *Stat.* 2 & 3 *Ph. & Ma.* c. 7.

(f) 31 *Elix.*

c. 12.

of tolls, as *turn-toll*, for beasts driven to be sold at market, and do return unfold; *toll-travers*, for every beast driven over his ground; *through toll* for beasts that go through a town, or over a ferry or bridge. There is also *tronage*, *pontage*, *prisage*, *cranage*, *wharfage*, *anchorage*, *stallage*, *pickage*, &c. *Liberty of seising the goods and chattels*, (1) *Of felons*, which are forfeited by conviction, and sometimes without. (2.) *Of fugitives*, or them that fly for felony. (3.) *Of those put in the exigent*, in order to outlawry for felony. *A deodand*, is when any moveable thing inanimate, or beast animate doth cause the untimely death of any man by mischance, in any county in *England*, (but not upon the sea or salt water) and that thing, and every thing moving with it is forfeited, if he dies within a year and a day after; as when a cart-wheel runs over and kills one, the cart and horses are forfeited to the lord, to be distributed among the poor. But if one under 14 years old falls from a cart, horse, &c. there is no deodand. Things fixed to the freehold can't be deodands, as the wheel of a mill, &c. If *A.* kills a man with *B.*'s sword, the sword is a deodand. If one fall out of a vessel in fresh water, the vessel is a deodand (a). *Treasure trove*, is treasure (either gold or silver) found hid in the earth (not lying upon the earth, or hid in the sea), and which for want of a true owner belongs to the lord of the liberty, and to conceal it is fine and imprisonment (b). *Waifs*, are goods stolen, and waived upon pursuit by the thief in his flight, and are forfeited to the lord of the manor; the reason of it is a punishment of the owner, for not pursuing and bringing the thief to be attainted. If the thief had them not in his possession upon pursuit, the owner may seize them where he finds them (c). *Estrays* are cattle that stray into another man's ground, and not owned by

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(a) *Wood's Inst.* 216.  
(c) 5 *Rep.* 109.

(b) 3 *Inst.* 132.

by any man. If they are proclaimed on two market-days, in two several towns next adjoining, and the owner doth not claim them within a year and a day, they belong to the lord of the liberty. And if a lord (who claims under the king) keeps a stray three quarters of a year, and within the year it strayeth again, and another lord getteth it, the first lord can't retake it, for until a year and a day are past, and proclamation made as aforesaid, he hath no property; and therefore the possession of the second lord is good against him. If the owner claims the stray within the year and a day, he must pay for the keeping. But in the mean time the lord cannot work it, tho' he may milk a stray cow within the year. If the cattle were never proclaimed, the owner may take them at any time. No fowl can be strays but swans. The cattle of the king cannot be strays (*a*). A wreck, is applied to such goods as after shipwreck are cast upon the land by the sea, and left there within some county. None of those goods which are called *jetsam* (from being cast into the sea while the ship is in danger, and after perish), or those called *flotsam* (from floating upon the sea after shipwreck), or those called *lagan* or *ligan* (goods sunk in the sea, but tied to a buoy, &c. that they may be found again after the shipwreck) are to be esteemed wreck, so long as they remain upon the sea. *Wreck, jetsam, flotsam, and ligan*, may be gained by grant or prescription, as well as treasure trove, waifs, and estrays. If there is no grant or prescription, they belong to the king (*b*). Where a man or other living creature escapes alive out of a ship whereby the owner of the goods may be known, neither the vessel nor any thing in it shall be adjudged wreck, but shall be restored to the owner, if he claims within a year and a day after seizure; but the king may claim at any time, and if the goods be not seized by the lord of the liberty, but taken away by wrong-doers, the owner may have an action,

(a) *Wood's Inst.* 216.

(b) *Ibid.* 217.

action, and if the wrong-doers are unknown, he may have a commission to inquire, &c. (a).

(II) *A privilege,*

*What.*

**I**S a private law allowed to a private man or corporation, to be exempted from the rigour of the common law. It is sometimes used for a place that hath a special immunity.

It is either *personal*, as of a member of parliament and convocation, and their servants, not to be arrested, sitting the parliament or convocation, &c. Or *real*, as that which is granted to a place, as to the courts at *Westminster*, and the universities, that their members or officers must be sued within their precincts or courts, and not in other courts (b).

(KK) *Estates in goods and chattels personal.*

*Chattels*

*what.*

*Kinds.*

**C**Hattels are all goods moveable or immoveable that are not freehold, and they are either,

*Real*, which concern the realty or lands and tenements, as guardianships, leases of lands, &c. for years, or at will, the interest in an advowson for one turn, interests by statute merchant, statute staple, and *elegit*, (of which see before).

Or, *personal*, as gold, silver, plate, jewels, implements of household, all moveable goods whatsoever, cattle of all sorts, corn sown upon the ground (because it comes not without industry), deeds, an apprentice for years, &c.

*Property*

*what.*

*Kinds.*

The ownership of a chattel personal, is termed a property (c).

Properties are *absolute* or *qualified*. One may have an absolute property in hens, geese, ducks, peacocks, &c. but not in wild beasts, fowls of the air,

(a) *Ibid.* & Stat. 3 Ed. c. 4.  
*Inst.* 218.

(c) *Finch* 176.

(b) *Wood*



air, fishes of the sea, or in rivers, partridges, deer, coies, hares, &c. and therefore it is not felony to steal them. And one may have an absolute property in things of a base nature as mastiffs, hounds, greyhounds, and spaniels, and it is not felony to steal them; tho' an indictment may be preferred for a trespass, or an action brought for damages for taking them away.

A *qualified* property and possessory may be obtained by *industry*, as by taking creatures *feræ naturæ* (i. e. *naturally wild*) and making them tame, and then we have only a property in them so long as they remain tame, and do not regain their natural liberty, and have not a custom of returning. Of these felony may be committed. Or *by impotency and place* in things wild by nature; as of young hawks that are in one's ground, or young pigeons in the nest, and of these felony may be committed, and the owner of the soil may have an action of trespass, if they are taken when they cannot fly. Or *by privilege* of a park, warren, &c. of these felony cannot be committed, unless reduced to tameness, and known so to be, by the offender. Deer chased out of a park, and followed by the keeper with fresh pursuit, fishes that are in trunks, &c. remain in possession, and as such are a property. But if deer get out of a park and stray, or conies out of warren, it is lawful for any one to take them (a).

Property is either in *possession* or *action*. 1. *In possession*, either *generally*, when no other can have it from one, or with one, but by one's own act or default. Or *specially*, when another has a concurring interest with one, or where there is property also in another as well as the owner; as by bailment, i. e. a delivery of goods in possession, and is either to keep or employ; by goods pledged or pawned; by goods granted conditionally; by things distrained; by goods demised or leased out  
for

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(a) *Finch* 176, 177. *Wood's Inst.* 318.

*Who may  
have them.*

for a term, &c. 2. *In action*, by an interest to sue at law either for the things themselves, or damages for them, as for debts, wrongs, &c. All these things in *possession* or *action* one may have in his own right, or in the right of another, as executor in right of the testator, &c. (a)

See of *deodands*, *treasure-trove*, *waiving*, *straying*, *wreck*, &c. Tit. *Franchises*, ante.

*Of gifts.*

A gift may be both of chattels real or personal without deed, except in some special cases (b).

But if there is a general gift of all one's goods without exception of apparel, or other necessary things tho' by deed, it may reasonably be suspected to be fraudulent to deceive creditors, &c. And a gift of all one's goods to one to whom there may be a true debt owing, &c. is void against other creditors, &c. though good against the giver, his executors or administrators. It is adviseable that a gift in satisfaction of a debt be made, 1. In a publick manner before neighbours, &c. 2. The goods to be appraised, and the gift made in satisfaction of the debt. 3. And the donee to take possession of them.

*Caution.*

*Fraudulent gifts.*

Deeds of gift, goods and chattels made in trust to the use of the grantor to defraud creditors, are void (c).

*Of buying  
and selling.*

If one buys wares, he must not carry them away before he has paid for them, unless a day of payment is allowed him. If the bargain is, that you shall give me 5 l. for my horse, and you give me a penny earnest which I accept, this is a perfect sale. If I say I will sell my horse for 5 l. and you say you will give me 5 l. and presently go to tell out the money to pay for him, I can't sell him to any other; but if you don't pay me presently it is no contract. If I sell my horse for money, I may keep him till I am paid; and if a horse dies in my stable after I have sold him, and before I have delivered

(a) *Wood's Inst.* 319.

(b) *Perk.* 57.

(c) *Stat.* 3 Hen. 7. c. 4. 13 Eliz. c. 5.

livered him to the buyer, I may notwithstanding have an action for my money; because the property was in the buyer (a).

No contract for the sale of goods, for 10 l. and upwards is good, unless the buyer actually receives part of the goods sold, or gives something in earnest to bind the bargain, or in part of payment, or some note thereof in writing, be made and signed by the party to be charged with the contract, or by his agent lawfully authorized. And no action shall be brought upon any agreement that is not to be performed within a year after, unless the agreement be put in writing and signed by the party to be charged therewith (b). So if any agreement is for wares under 10 l. and they are not delivered within a year, it is void, unless put into writing, tho' earnest be given; but if no day is set, or the time is uncertain, they are good, for it does not appear but that the payment may be in the year (c).

All persons may make their wills of goods and chattels, except an infant male under 14, an infant female under 12, or as some say infants under 18 (d), a married woman except by her husband's consent and licence first obtained (e); but of the goods which she hath as executrix she may make her husband executor, or another person without her husband's consent (f).

*Of disposing of goods and chattels by will.*

If a woman makes her will, and afterwards marries, the will is countermanded (g). Ideots, lunaticks, an alien enemy, recusants convict, corporations, cannot make a will; but an outlaw in a personal action may (h).

**Exe=**

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(a) *Noy's Max.* 87, 88. *Hob.* 41. (b) *Stat.* 29 *Car.* 2. c. 3. made perpetual by 1 *Jac.* 2. c. 17. § 5. (c) *Wood's Inst.* 321, 322. (d) *Co. Lit.* 89. b. (e) *Perk* 501. (f) *Ib.* 502. (g) 4 *Rep.* 61. (h) *Wood's Inst.* 323, 324.

## \* Executors.

ALL that are capable of making a will are capable of being executors (a). Also an infant in his mother's womb may be one; but administration must be granted to some other person till the infant is 17 years of age. A married woman may also be an executrix. So may a person excommunicated, or outlawed, and aliens (b), but popish recusants convict can neither be executors nor administrators (c). Where several executors are made they are in the law as one executor, therefore mostly the acts done either *by* or *to* any of them, are deemed to be done *by* or *to* all. An executor may be made upon *time*, as if one be made executor when he comes of age, or when he comes from *London*, or while he lives at *London*, and such like references to time, as during 10 years, or after 16 years, &c. Or upon *condition*, as if the executor will find sureties to perform the will, &c. (d).

Every *intermeddling* with the goods of the deceased, is not an acceptance of the executorship to make one chargeable as executor. As if one does an act of charity or humanity by locking up the goods of the deceased that they may not be wasted, or if one buries the deceased, and sells his goods to do it, or if one takes away *his own* goods that were in the house of the deceased, or use some of the goods of the deceased in the necessary occasions of the family, or take the goods by letters to collect the goods of the deceased. These acts will not amount to an acceptance of the executorship, if the special matter is pleaded (e). When an executor

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\* See *Wood's Convey.* vol. 1. p. 127, &c.

(a) *West's Symb. P.* 1. § 635. (b) *Wood's Inst.* 325. (c) *Stat. 3 Jac. c. 5.* (d) *West's Symb. P.* 1. § 637. (e) *Dyer* 166, 167.

executor has *accepted* the executorship, he cannot assign it over, or refuse it. And where the executor refuses to take upon him the executorship, or if no executor is appointed by a will, then administration with the will annexed must be granted. If there are several executors appointed, and one *accepts*, and all the rest *refuse*, he that accepts must bring actions relating to his executorship in (a) all their names, and one may release an action. But an action must be brought against him or them that act or administer (b).

An executor may be in his own wrong, where he is neither executor or administrator lawfully, and yet acts as if he was; as where he converts the goods of the deceased to his own use, and alters the property by gift, sale, &c. or where he delivers the goods to creditors or legatees in satisfaction of their debts or legacies, or receives any debt due to the deceased, and gives a release for the same, or releases any debt due from the deceased before it is paid, or pays any debt due from the deceased, except it be with his own money; but if there is a legal executor who hath proved the will, or if administration is legally granted before the stranger intermeddles, he is not then executor in his own wrong, but a trespasser against the executor or administrator (c). And every person that receives goods or debts of any intestate, or a release of the debt of the intestate upon fraud, or without valuable consideration or thereabouts (except in satisfaction of some debt) is chargeable as executor in his own wrong, as far as the goods and debt coming to his hands, or whereof he is released, will satisfy, deducting allowance of all just principal debts owing to him by the intestate, and of all other payments made by him (d).

An

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(a) *Noy's Max.* 103. *Swinb.* 324. *Went. Off.* Ex. 31, 95. *Suppl. to Wentw.* 39. *Perk.* f 485. 9 *Rep.* 37. *Pickering's Finch* 294. 295. *Finch* by *Millar* 409.

(b) *Wood's Inst.* 325, 326.

(c) *Ibid.*

(d) *Stat.* 43 *Elix.* c. 8.



An executor is the representative of the testator, of all his chattels real and personal, and the law gives him those which are in *possession* and in *action* (if they are not bequeathed), and subjects him to every man's claim and action, which he had against the testator, except for personal wrongs done by the testator to the person, goods, or land of another, because personal actions die with the person.

*What the  
wife is in-  
titled to.  
And what  
the heir.*

The wife of the testator must have her wearing apparel, which is necessary and convenient for one in her station and character. And the heir must have the glass windows, the wainscot that is fixed by nails or screws, furnaces of lead or brass fastened to the wall, or in the ground, lead fixed to the house, doors within or without, that are hanging, locks and keys, tho' the executor hath a lease for years of the house. Also the heir must have the trees, and the deeds belonging to the inheritance.

*Assets.*

The goods and chattels which belonged to the testator when he died, if they come to the hands of the executor, are *assets*, or goods and chattels for which the executor is chargeable (as far as they extend) to creditors or legatees.

The remainder after all the debts and legacies are paid, belongs to the executor.

*Duty of  
executor.*

*The duty of an executor* is, 1. To bury the testator in a decent manner according to his degree and character, but with regard to his estate left after debts paid; for whatever he lays out extravagantly, if there is not enough to pay debts, he must bear it at his own expence; but if they are reasonable and necessary, funeral charges must be allowed before debts and legacies (a). 2. He must make an inventory of the goods of the deceased, with their value as appraised in the presence of the executor, by two or more of the creditors or legatees, or two of the next of kin, or in their default by two other honest men. It must be indented, and one part delivered on oath of the executor

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(a) *Doct. & Stud. Dial.* 2. c. 10.

executor or administrator before the ordinary, &c. the other part the executor or administrator should keep (a). 3. The executor must prove the will before the ordinary, either in common form by his own oath, or by witnesses besides his own oath.

A *caveat* may be entred against the probate in common form, and tho' proved in common form, the executor may be obliged to prove it again by witnesses. 4. He must pay debts and legacies,

and debts before legacies. After the charges of the funeral, inventory, opposition by a *caveat* and the probate, the *king* is to be preferred for his debts due upon *record and specialty*, then the *forfeitures for not burying in woollen* must be paid, before any statute, judgment, or other debt or duty whatsoever. Afterwards debts to private persons upon *judgments* against the testator in any court of record, without any condition of first and last (b).

But such judgments have no preference unless dogged (c). He that first sues out execution upon his judgment is preferred. But before execution the executor may pay whom he will first. Then *statutes or recognizances*, those forfeited before those that are for the performance of covenant, &c. when otherwise, he may give precedency as he pleases before execution. Then arrearages of rent upon leases, &c. in writing, (tho' some say upon parol too, because it favours of the realty in regard of the profits received), for the lessor may distrain and pay himself whether the executor will or no. Then debts upon *specialties*, as obligations, bills penal, or single bills sealed without penalty.

Lastly, debts upon *bills or notes* unsealed, or verbal contracts; for there is no difference betwixt notes and shop-books, &c. some prefer the wages of servants, that are within the statute of labourers, before debts due upon shop-books. After the *debts* are paid, he must pay *legacies*, and may

(a) Stat. 21 Hen. 8. c. 5.

(b) Wood's Inst.

(c) Stat. 4 & 5 W. & M. c. 20.

## Executors.

may prefer himself, tho' there is nothing left to pay other legacies; afterwards he may pay which he pleases first, tho' there's not enough to satisfy the other legatees. But the fairest way where there is not *enough*, is to pay their proportions. But if there is a *specifick* legacy, or any particular thing given in *specie*, as a lease, a horse, a silver cup, &c. this must be given before any other legacy (a).

When legacies are given to children, and a wife is made executrix; and she marries again, she, at the instigation of her husband, will commonly endeavour to discount maintenance and education; but this will not be suffered in Chancery, so as to diminish the principal sum, for a mother ought to maintain her children; yet money paid for binding a child an apprentice has been allowed (b).

An executor or administrator is not chargeable with any special promise to answer damages out of his own estate, unless he (or some other authorized by him) give and sign a note thereof in writing (c). 5. He must pass his *accounts* concerning the testator's goods and chattels before the ordinary. The inventory shews what is his *charge*, and the account must be his discharge, but it will only discharge him from suits in the spiritual court, and not at common law.

## Fines.

Of acknowledging them.

**F**INES taken and acknowledged before commissioners by *dedimus potestatem* not to pass, unless some person present when taken and acknowledged, personally appears before the lord chief justice, or some other justice of this court, and be examined upon oath, touching the execution thereof, and particularly whether such person knows the parties

(a) *Wood's Inst.* 332.

(b) 2 *Ventr.* 353.

(c) *Stat.* 29 *Car.* 2. c. 3. made perpetual by 1 *Jac.* 2. c. 17. § 5.

parties acknowledging such fine. *Reg. H. 13 G. 1. C. B.*

And when taken as above, not to pass the king's silver office, and the king's silver be recorded, unless oath be made before some judge of this court of the due execution, and of the day and year when each cognisor executed the same, where a rasure in the day or year shall appear in the caption; and no fine so acknowledged before such commissioners in case of such rasure, to be received and entered by the clerk of the king's silver, before there be an *allocatur* of a judge obtained. And fines taken and acknowledged before the said lord chief justice, or any judge of assize, or serjeant at law, if the date of the caption appears to have been rased, not to pass the king's silver office, nor the king's silver be recorded, before there be an order under the hand of some judge of this court obtained. And after any fine has passed the said office, and the king's silver of such fine is recorded, neither the *præcipe* nor caption of any such fine or writ of *dedimus potestatem*, or writ of covenant, by which such fine is passed, must be rased or altered before there be an order under the hand of a judge of this court for doing thereof, and for amending all entries made from such writs first obtained. *Reg. E. 9 A.*

*Rasures.*

Writs of covenant upon fines of messuages, lands, or tenements, or rents issuing out of them, lying in *London* or the liberties thereof, or in *Middlesex*, whether singly or jointly, with messuages, lands, or tenements elsewhere, not to be returned until the attorney prosecuting the fine gives notice in writing to the said clerk for the said returns, or his deputy, as well of the name and place of habitation of the attorney to the fine, as of their own names and habitations, as also of the particular street, lane, or place where such messuages, &c. are situate; and of the persons names who are in possession of such messuages, lands, or tenements, or who are to pay the post-fines thereupon due to the king. And such notes to be kept on a file, to be, on application to the said clerk, taken account of by the secondaries



of the counters in *London*, or under sheriff of *Mid-  
dlesex*. Reg. E. 6 W. & M.

All caveats and orders for stopping fines (illegally acknowledged) to be renewed every term, and copies thereof left with the clerk of the king's silver, who is to demand only 3 s. and 4 d. per term, or be void. Reg. E. 29 c. 2.

Hil. 17 Geo. II. 1743.

*W*Hereas by a rule of this court made in the 13th year of the reign of his late majesty king George, It was ordered, That no fine whatsoever taken and acknowledged before any commissioners, by virtue of a writ of dedimus potestatem to them directed, be allowed to pass, unless some person present when such fine was taken and acknowledged did personally appear before the lord chief justice, or some other justice of this court, and was examined upon oath touching the due execution thereof, and particularly whether such person knew the parties acknowledging such fine; which rule has been found by experience to be attended with inconveniences, and has not answered all the good purposes for which it was intended; for remedy thereof, and the better to ascertain the practice for the future,

On taking  
fines before  
commission-  
ers, instead  
of the oath  
viva voce,  
an affidavit  
of the due  
acknow-  
ledgment  
may be  
made by an  
attorney  
before a  
person au-  
thorized to

It is Ordered by this court, That from and after the first day of next term, instead of an oath made viva voce of the due acknowledgment of such fines, an affidavit or affidavits in writing on parchment shall be made and annexed to every fine so taken as aforesaid, in which affidavit or affidavits the person or persons making the same shall swear, That he or they knew the party or parties acknowledging such fine; That the same was duly signed and acknowledged; That the party or parties acknowledging, and also the commissioners taking the same, were all of full age and competent understanding; That the femes covert (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same, and that the conu-

for



for or conufors, and every of them, knew the fame to be a fine to pafs his, her or their eftate or eftates, which fine, together with fuch affidavit or affidavits annexed, fhall be transmitted to the faid lord chief juftice, or fome other juftice of this court for his *allocatur* thereon, and fuch affidavit or affidavits fhall remain annexed to fuch fine, and be left with the fame in the proper office. And it is further Ordered, That all and every fuch affidavit and affidavits as aforefaid fhall be made by fome attorney or attornies of the courts of *Westminster-Hall*, or of the great feflions in *Wales*, or of the counties palatine of *Chefter*, *Lancaster* and *Durham*, and fhall be fworn before a perfon duly authorifed to take affidavits in this court.

*take affidavits in this court.*

*By the court.*

*The affidavit.*

In the Common Pleas.

**A.** B. of ——— in the county of ——— one of the attornies of ——— maketh oath and faith, that he knows C. D. and E. his wife, and F. G. and H. his wife, the conufors named in the fine hereunto annexed, and that the faid fine was duly figned and acknowledged by them in this deponent's prefence, and that they the faid C. D. and E. his wife, and F. G. and H. his wife, and alfo J. K. and L. M. gentlemen, the commiffioners taking the fame fine, were at the time of taking thereof all of full age and competent underftanding; That the faid E. and H. were folely and feparately examined apart from their husbands, and freely and voluntarily confented to and acknowledged the fame, and that the faid conufors, and every of them, knew the fame to be a fine to pafs his, her or their eftate and eftates.

Sworn at ——— 3c.

Trin. Term, 26, 27 Geo. 2.

It is Ordered by this court, That from and after the first day of next *Michaelmas* term, in the affidavit or affidavits made in pursuance of the above rule, the person or persons so making the same, shall not only swear as they are directed by the said rule, but also that the fine was duly signed and acknowledged upon the day and year, or days and years mentioned in the caption; and if there be any rasure or interlineation in the body or caption of such fine, that such rasure or interlineation was made before the party or parties signed the said fine, and before the caption was signed by the commissioners: Which affidavit or affidavits shall be annexed to the fine, and shall be transmitted to the said lord chief justice, or some other justice of this court for his *allocatur* thereon, and shall remain annexed to such fine, and be left with the same in the proper office as is directed by the said rule.

*By the court.*

An addition to be made to the former affidavit.

*And this deponent further saith, That the said fine was duly signed and acknowledged, upon the day and year mentioned in the caption, (or upon the several days and year or years respectively mentioned in the captions, if there happen to be more captions than one;) and that the rasure or interlineation (rasures or interlineations) in the body (or in the caption or captions) of such fine (as the case shall happen) was (or were) made before the party (or parties) signed the said fine, and before the caption (or captions) was (or were) signed by the commissioners.*

Habeas

## Habeas corpus.

K. B.

**W**HERE a person is brought by *habeas corpus* into court, or before a judge, in order to be committed to the custody of the marshal, such writ, with the return thereof, to be left with the secondary, or the clerk of the judge before whom such person, is brought to be affixed; and a copy or note of such return, under the hand of such judge or secondary, to be delivered to the marshal at the time of commitment; which copy or note must be made by the person so prosecuted, or his attorney. *Reg. T. 3 A.*

Prisoners committed to the custody of the marshal upon a *habeas corpus ad respondendum, vel ad faciendum & recipiendum*, must remain for two days next after such commitment, notwithstanding any such other *habeas corpus* from any other court delivered to the said marshal. *Reg. H. 5 W. & M.*

All defendants not being executors or administrators, who shall prosecute

C. P.

**H***Abeas corpus cum causa ad fac. & rec.* directed to any sheriff (except *London* or *Middlesex*) not to be returnable *immediatè*, or in the vacation time, but at a day certain in court in the term. But in *London* or *Middlesex*, in term or vacation may be returnable *immediatè*. And when returnable *immediatè*, the sheriff ought to make his return the same day that the writ is delivered, and to bring the body immediately as is required by the writ, without permitting him to wander abroad by colour or pretence thereof. And where a *habeas corpus* is directed to a sheriff, warden of the *Fleet*, marshal or other gaoler, the prisoner is to be brought into custody at the day limited in the writ without permitting him to wander abroad under pretence thereof. *Reg. M. 1654.*

*Habeas corpus ad respondendum* may be granted to the warden of the *Fleet*, or to the keeper of an inferior prison of

## Habeas Corpus.

K. B.

prosecute any *habeas corpus* to remove any suit out of any inferior court, must put in special bail in all actions (except for scandalous words and small assaults) unless one of the justices of the court otherways order. *Reg. H. 2 f. 2.*

*Note*; The bail are liable to all the actions mentioned in the return of the *habeas corpus*, wherein the defendant is declared against within two terms after.

Bail not to be put in on a *habeas corpus* before the writ, and the causes for which the defendant is detained, be returned, nor be taken by any judge, unless the writ with the return be brought before him, to be filed when put in. *Reg. M. 1651. E. 29 C. 2. H. 10 W. 3.*

And at the time of putting in the bail 4s. 10d. to be deposited in the judge's clerk's hands. *Reg. E. 29 C. 2.*

If bail on *habeas corpus* be put in *de bene esse* before a judge, exception to be in 28 days after put in, or it may be filed by the defendant's attorney, within 4 days next

C. P.

a liberty or franchise, where a *capias* is returned *non est inventus*; such writ to recite shortly the *capias*, and returnable at a day certain in court, and to be a good cause of detainer, as well as where a *capias ad respondendum* comes to a sheriff. *Reg. Ead.*

If a *capias* be returned *non est inventus*, against a prisoner in the Fleet, he must appear upon a *habeas corpus ad respondendum*, as well at the suit of a stranger, as at his suit whereupon he is imprisoned, and answer to a declaration according to the rules of the court, or judgment may be entered against him. *Ibid.*

*Habeas corpus ad satisfaciendum* may be granted to the warden of the Fleet, or to such inferior gaoler, (as a *habeas corpus ad respondendum* before mentioned) returnable in court at a day certain, and the number of the roll of the judgment to be indorsed upon the writ by the attorney who sues it out, and such writs to be a cause of detainer. *Ibid.*

*Habeas corpus* directed

*K. B.*

next after the end of the said 28 days. *Reg. M. 16 C. 2.*

Where the plaintiff excepts against bail, he may have a rule for a *procedendo*, unless bail be perfected in 4 days after service of the rule, whether in term or vacation.

*C. P.*

to inferior courts of London, Westminster, Southwark, and other courts within 5 miles of London, may be returnable immediately. And a *habeas corpus* returnable in court to be returnable at a day certain. *Reg. M. 1654. H. 13 & 14 C. 2.*

If upon a *habeas corpus* the prisoner be returned charged with process of *B. R.* or Exchequer, and out of *C. B.* the prisoner may be committed with those causes. And if upon *habeas corpus cum causa*, the prisoner be returned charged with a process out of *C. B.* tho' returnable at a day to come, the prisoner may be committed with his cause. And upon every commitment by a judge out of court, the prosecutor of the *habeas corpus* is to have one of the prothonotary's clerks present at turning over the prisoner, that the commitment may be duly entered and filed. *Reg. M. 1654.*

If upon a *habeas corpus*, or *cepi corpus*, the party be returned in custody, and bailable, and special bail requirable, the bail not to be taken absolutely without consent of the plaintiff or his attorney; and if taken *de bene esse*, the prisoner not to be discharged till the bail be assented unto, or the plaintiff over-ruled in court to accept the same upon examination. *Reg. M. 1654. C. B.*

Within 4 days after allowance of *habeas corpus*, notice to be given in writing of the names and addition of the bail, the time when, the judge before whom it is intended to be put in, to the plaintiff or his attorney; but if not to be found, to be left with the chief clerk of the inferior court, or his deputy, and oath to be made thereof, otherwise the bail not to be taken, and a *procedendo* may be granted if desired, before bail accepted. *Reg. M. 1654. H. 13 & 14 C. 2. C. B.*

M 4

If



## Habeas Corpus.

If bail in such case be not put in within 8 days after the *habeas corpus* allowed in inferior courts when it is returnable *immediatè*, a *procedendo* may be granted by any judge of this court. *Reg. M.* 1654. *H.* 13 & 14 *C.* 2. *C. B.*

Bail taken in the absence of the plaintiff or his attorney, to be taken *de bene esse*, and if not excepted against within 20 days after notice, the bail to be delivered out to be filed. *Ibid. Ibid.*

And if taken before a judge at his chambers, and not excepted against, if not filed within 4 days after the 20 days, a *procedendo* may be granted upon certificate that it is not filed. *Ibid. Ibid.*

In term time the plaintiff in the inferior court may speed the defendant to put in or file bail, by giving rules in the bill of pleas, and if not filed according to the rules, upon certificate thereof, a *procedendo* to be granted. *Ibid. Ibid.*

Upon bail taken of a person in custody, the judge's clerk to deliver the bail to the prothonotary, to be filed, if assented to; and to that end the prothonotary's fees to be deposited, but the prisoner not to be discharged, until the bail assented to, or over-ruled in open court. *Ib. Ib.*

Declara-  
tion.

If bail be given upon a removal by *habeas corpus*, the original to be shewn upon tending the declaration, otherwise the bail not liable; unless the party or his attorney will voluntarily appear, or take a declaration without shewing it. *Reg. M.* 1654. *C. B.*

And if the removal be out of an inferior court, the new original to agree with the nature of the action, the sum in demand, and the county, otherwise the bail not liable; but if the party will voluntarily appear to such varying original, to be good as to the party; but if upon a cause removed by *habeas corpus* out of the courts of Canterbury, Southampton, Hull, Litchfield, or Pool, which are counties where the judges of the *nisi prius* seldom come, if the action be transitory it must be laid in the county of Kent, Southampton, York, Stafford,

or

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or *Dorset*, where the town and county lieth, and the recognizance to be taken accordingly. *Ibid.*

Unless the plaintiff bring a prisoner, committed to the *Fleet* by *habeas corpus* in *Hilary* term or vacation, to the bar by *habeas corpus*, and declare against him within 6 days after *Trinity* term begun, such prisoner may be discharged by *superfedeas*, to be issued of course out of the prothonotary's office where the commitment with the causes is entered, so as such prisoner first enter his appearance by attorney with the said prothonotary in case of an attachment of privilege or of a plaint, or with the philazer upon other process returnable in this court: And do bring a certificate under the hand of the warden or clerk of the *Fleet*, that no proceedings by *habeas corpus* have been had against him within the said time. And if committed to the *Fleet* in *Easter* term or vacation, unless the plaintiff bring such prisoner to the bar by *habeas corpus*, and declare against him within 6 days after *Michaelmas* term begun, such prisoner shall be discharged in manner aforesaid. And if committed to the *Fleet* in *Trinity* term or vacation, unless the plaintiff bring the prisoner to the bar by *habeas corpus*, and declare against him before the end of *Michaelmas* term following, such prisoner may be discharged as aforesaid: And if committed to the *Fleet* in *Michaelmas* term or vacation, unless the plaintiff bring the prisoner to the bar by *habeas corpus*, and declare against him within 6 days after *Easter* term begun, such prisoner may be discharged in manner aforesaid. And the plaintiff may declare such appearance entered the next term after such appearance or *superfedeas* granted; and the attorney appearing shall be bound to take a declaration, and not afterwards. *Reg. H. 14 & 15 C. 2. C. B.*

If a prisoner be brought to the bar by *habeas corpus*, returnable at a day certain, being before the day of appearance of the third return of any term, and the said prisoner names an attorney who shall appear for him at the suit of the plaintiff, defendant is compellable to plead by the last day of

*Pleading.*

## Habeas Corpus.

the said term, to a declaration delivered to the said attorney, if the plaintiff give a rule for him so to do : but when any prisoner is brought to the bar by such writ returnable after the appearance day of such third return, the defendant to have an imparlance of course till the next term following. But if the prisoner refuse to nominate an attorney to appear for him, then he is to plead within 8 days, provided there be 8 days after the return of the *habeas corpus*, to give a rule to be out within the term. And after issue joined, 10 days notice at least, exclusive of the day of giving such notice, to be given to the defendant (being actually in the prison of the *Fleet*) of the time of trial of such issue to be had. *Reg. H. 13 & 14 C. 2. C. B.*

*Costs.*

On a cause removed by *habeas corpus*, out of an inferior court, having jurisdiction of the cause, if judgment be given for the plaintiff, the costs below to be considered and cast into the judgment ; if for the defendant, the charge of putting in bail. *Reg. M. 1654. C. B.*

If it be returned upon a *habeas corpus*, that the prisoner is condemned by judgment, he shall be remanded, and not let to bail, against the will of the plaintiff, until satisfaction of the sum adjudged. *Stat. 2 H. 5. stat. 1. c. 2.*

No *habeas corpus* shall be allowed except delivered before the jury have appeared, and one of them be sworn, *Stat. 16 Car. 1. c. 4.* or delivered before issue or demurrer joined, so as it be not joined within six weeks after the arrest or appearance. And if a cause be removed and remanded, it shall not be afterwards removed before judgment. In a cause not concerning freehold, lease or rent, if the debt or damages do not exceed 5*l.* it shall not be removed but by error or attain. 'This to extend only to such courts of record where there shall be an utter barrister of three years standing, steward, town clerk, judge or recorder, or assistant to such judge there present, and not of counsel in the cause. *Stat. 21 Jac. c. 23.* The judges of such courts may proceed in causes not laid

laid to exceed 5 *l.* though there be other actions against the defendant laid to exceed 5 *l.* *Stat. 12 G. c. 29.*

When any person brings a *habeas corpus* directed to any sheriff, gaoler, &c. for any person in their custody, and the writ is served upon the said officer, or left at the prison with any of the under officers, the officer shall within three days after service thereof (unless the commitment were for treason or felony expressed in the warrant) upon tender of the charges of bringing the prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the writ, not exceeding 12 *d.* per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he be remanded, and that he will not escape by the way, return such writ, and bring the body according to the command thereof, and certify the causes of his detainer; unless the commitment be beyond 40 miles from the place where the court or judge resides; and if beyond 20 miles and not above 100, then within 10 days; and if beyond 100 miles, then within 20 days after such delivery. And if any person is committed for any crime (except felony or treason expressed in the warrant) in the vacation, he (unless convicted or in execution) or any one in his behalf, may complain to the lord chancellor or any one of the judges, who upon view of the copies of the warrants of commitment or detainer, or upon oath that such copies were denied, are required, upon request in writing by such person, or any on his behalf, attested by two witnesses present at the delivery of the same, to grant a *habeas corpus* returnable *immediate*; and upon service thereof the officer or his deputy shall bring such prisoner before the lord chancellor, &c. before whom the writ is returnable, and in case of his absence before any other of them, with the return of such writ and the causes of commitment and detainer; and thereupon within 2 days the lord chancellor, &c. shall discharge the prisoner, taking his recognizance.

*See Mr. Burn's observations on this act. Burn's Justice, 8vo, p. 130.*



## Hue and Cry.

nizance with one or more sureties, in any sum according to their discretions, having regard to the quality of the prisoner, and the nature of the offence, for his appearance, unless it appears to the said lord chancellor, &c. that the prisoner is legally detained, for such matters for which the prisoner is not bailable. Person wilfully neglecting to pray a *habeas corpus* 2 terms after imprisonment, not to have it in the vacation. After the assizes proclaimed for the county, no person shall be removed from the common gaol upon *habeas corpus*, but shall be brought before the judge of assize in open court. But a person may after the assizes ended. *Stat. 31 C. 2. c. 2.*

## Hue and Cry.

**I**N order to raise a *hue and cry*, go to the constable of the next town, and declare the fact, and describe the offender, and the way he is gone; whereupon the constable ought immediately, whether it be day or night, to raise his own town, and make search for the offender; and upon not finding him, to send the like notice with the utmost expedition, by horsemen as well as footmen, to the constables of all the neighbouring towns, who ought in like manner to search for the offender, and also to give notice to their neighbouring constables, and they to the next, till the offender be found. *Hawk P. C. B. 2. c. 12. § 6.*

See statutes 8 G. 2. c. 16. 22 G. 2. c. 24, 46. *Com. Rep. 345. Str. 406. 2 Str. 1170, 1247.*

## Jews.

**I**F any *Jewish* parent, in order to compel his protestant child to change his religion, shall refuse to allow such child a maintenance suitable to the circumstances of the parent, and the age and education of such child, the lord chancellor may make such order for the maintenance of such protestant



## Impar lance.

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testant child as he shall think fit. *Stat. 1 Ann. stat. 1. c. 30.*

## Impar lance.

K. B.

**S**pecial impar lance not to be allowed any defendant without leave of the court. *Reg. E. 5 A.*

Where the cause of action is specially set forth in the process, and the plaintiff thereupon declares, the defendant shall not imparl without leave of the court. *Reg. H. 2 G. 2.*

C. P.

**D**efendant not to imparl till appearance entered. *Reg. E. 24 C. 2.*

In special actions plaintiffs may enter impar lances in the term following, entering the same with an *incipitur*, as has been used in *quare impedit*; but all other impar lances to be duly entered before any issues, demurrers or judgments be thereupon entered. *Reg. M. 1654.*

If the defendant appears the first term, and gives no rules to declare, the defendant's attorney may the second term be compelled to accept a declaration with impar lance, and the declaration may be entered as of that term, with an impar lance to the next, or in the first time with an *incipitur*, as before, as the cause requires. *Ibid.*

Upon a mere real action, or bare *clausum fregit*, an impar lance of course; but in dower after a view, if the day to appear be upon the first return of any *Hilary* or *Trinity* term, no impar lance without consent or rule of court. *Ibid.*

In ejectment or any personal action, if the appearance be the first return of *Hilary* or *Trinity*, no impar lance without consent or special rule, other than in *London* or *Middlesex*. If the appearance be before *Craft. Martin.* or *Mens. Pas.* no impar lance without consent or special rule. But if upon or after those returns, an impar lance of course. *Ibid.*

In

## Issues.

In *London* or *Middlesex*, if the appearance be before *Craft. Asc.* or before the last return of any other term, no imparlance without consent or special rule; but the defendant to plead as of that term within 14 days after the end of the term, upon rule given to answer; but if of *Craft. Asc.* or of the last return, an imparlance of course. *lb.*

Imparlanes or *incipiturs* to be entered in all causes according to ancient usage, the want whereof, where they ought to be entered, to be a sufficient cause for the defendant to have a further imparlance of course. And no common rule to plead to be given to any cause where imparlanes or *incipiturs* ought to be, and are not entered upon record in the prothonotary's remembrances, until the prothonotary gives allowance for giving such rule. *Reg. T. 21 C. 2.*

## Infants.

Infant trustees or mortgagees are impowered and compellable to convey as the court of *Chancery* or *Exchequer* shall direct. *Stat. 7 Ann. c. 19.*

## Issues.

K. B.

ON pleading a general issue, or general demurrer to any declaration, before any special demurrer or special plea pleaded, plaintiff's attorney to deliver to defendant's attorney a copy of the issue or demurrer, who must pay for it after the rate of 4*d.* per sheet copywise, and for the stamps thereon, or judgment may be signed as if no plea or demurrer

C. P.

Issues to be entered on record of the term they were joined, notwithstanding any consent given by the attornies or their agents on either side to the contrary. Offender punishable for a contempt. And the clerk of the treasury may require any persons suspected of such illegal practice, to produce such proceedings as the said clerk shall

## Judgments.

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demurrer had been given or pleaded. *Reg. T. 12 W. 3.*

If the plaintiff enter not his issue by the time allowed by the rule, he

shall be nonsuited, and the defendant have his costs. If the action be laid in *London* or *Middlesex*, the defendant ought not to give a rule for the plaintiff to enter his issue the same term in which the issue is joined, unless notice of trial hath been given; and in a country cause the plaintiff is not bound to enter his issue the same term. The plaintiff must enter his issue if the action is in *London* or *Middlesex*, and bring the record into the office within 4 days after notice of the rule; if in the country, before the continuance day of that term, or a *non pro's* may be signed and entered.

C. P.

shall think necessary for discovering when actually joined. *Reg. H. 11 G. 1.*

## Judgments.

K. B.

**N**O distinction as to time of signing judgments to be made betwixt town and country causes; but in all cases the plaintiff may sign judgment the day after the rule to plead is out, declaration having been regularly delivered or filed, and the defendant or his agent being called upon for a plea, according to the rules and course of the court. *Notice fix'd up in the K. B. office, Feb. 25, 1728.*

Judgment

C. P.

**W**HEN a deed, will, or letters of administration are to be shewn in a declaration, the plaintiff's attorney delivering a declaration with a subscription, the defendant not compellable to plead till the same be shewn; nor any nonsuit upon the plaintiff, if he shews the same before the end of the next term. *Reg. M. 1654.*

No judgment to be entered by default or *nil dicit*, without motion in court,

## K. B.

Judgment may be signed for not paying for declaration, general issue or general demurrer. *Reg. T. 12 W. 3.*

In all judgments the defendants names to be entred in a remembrance or docket alphabetically, for the better finding them out. *Reg. E. 1657.*

Every judgment shall be entred fairly on the roll, or an *incipitur* thereof before such judgment shall be signed.

And the names of the

plaintiff and defendant, and the county and cause of action shall be entered in a book kept by the secondary. *Reg. M. 5 Ann.*

If the defendant's attorney shall refuse *4d.* for his warrant of attorney to the plaintiff's attorney, the plaintiff's attorney may sign judgment against the defendant by default. *Reg. M. 5 Ann.*

The prothonotaries not to sign judgments (except final upon *posseas*, writs of inquiry, and *non prof.*) unless the stamp of the clerk of the warrants be first impressed on the judgment paper, whereby it may appear that warrants of attorney are duly filed. *Reg. M. 5 G. 2.*

In pursuance of *stat. 29 C. 2.* (whereby the day and year of signing judgments is to be set down upon the judgment paper, and upon the margin of the roll,) the attornies and clerks, that procure any judgment to be signed as aforesaid, must at the bringing in their rolls produce such paper, that the prothonotary may examine if the day and year in the margin of the roll agree with the day and year signed by the prothonotary on the judgment paper. *Reg. T. 29 C. 2.*

## C. P.

court, in popular actions and informations, or real or mixt actions, except ejectments. *Ibid.*

Upon *nul tiel record* pleaded, and no difficulty or variance appearing, judgment to be entred after rule, without motion. *Ibid.*

After an imparlance of three terms, without calling for answer, no judgment to be entred without a term's notice. *Ibid.*

And



And on signing judgments upon *postea*s, writs of inquiry, special verdicts, demurrers, *nul tiel record*, *relieta verificatione*, and such like, they must forthwith be delivered over to the respective clerks of the judgments, so that the days when signed may be drawn up in the judgment papers in each prothonotary's office, that the same may be entred on the margin of the roll. *Ibid.*

## Jury.

**U**PON reference to the secondary, to return a jury, or name 48 sufficient jurors for trial at bar, in the presence of the attornies on both sides, if either attorney does not appear at the time appointed for naming the jury, or to strike out 12 on either part; then the secondary may do the same in the absence of such attorney, and the jury to be returned by the sheriff to try the issue. *Reg. T. 8 W. 3. C. B.*

On *old d'Pringas's* sheriff to cause sufficient summons to be given to all jurymen, a week before the assizes at least. *Reg. E. 1651. C. B.*

# Limitation of Actions.

**W**RIT of right to be brought within 60 years before the *teste* of the writ. *Stat. 32 Hen. 8. c. 2.*

*Assise* of mortdauncestor, cosinage, ayle, writ of entry upon disseisin of the ancestor, &c. or any other action possessory upon the possession of the ancestors, &c. of any further seisin than within 50 years before the *teste* of the writ; and upon one's own seisin, within 30 years before the *teste*. *Ibid.*

*Avowry* or cognizance for rent, suit, or service to be made, and seisin of ancestor alledged, or in his own possession, or in the possession of another whose estate he shall claim, within 40 years. *Ibid.*

Where the king may not sue for manors, lands, or hereditaments, where the right accrued 60 years past, &c. *Vid. stat. 21 Jac. c. 2.*

*Formedon*



## Lunatics.

*Formedon* in descender, in remainder, and in reverter, to be sued within 20 years after the title and cause of action first fallen. And no person to make entry into lands but within 20 years after his right or title first accrues. And if any person intitled to such writs be an infant, *feme covert*, *non compos mentis*, imprisoned or beyond sea, such person and his heirs may bring action, or make entry, within 10 years after such imperfections removed. *Stat. 21 Jac. c. 16.*

Actions upon the *case* (other than for slander,) *account* (except such accounts as concern the trade of merchandise between merchant and merchant) *trespass*, *debt* (upon lending or contract, without specialty (or arrearages of rent, *detinue*, *trover*, *replevin*, and *trespass quare clausum fregit* shall be commenced within 6 years after the cause of action. And actions of *trespass*, of *assault*, *menace*, *battery*, wounding and imprisonment, within four years after the cause of action, and *case* for *words* within two years after the words spoken. The right of infants, *femes covert*, *non compos mentis*, persons imprisoned, or beyond sea, is saved; so that they commence their suits within the times above limited, after their imperfections removed. *Ibid.*

If any person against whom cause of action for *seamens wages*, or for *trespass*, *detinue*, *trover*, *replevin*, *account*, *case* or *debt* grounded on contract of lending, or for rent, shall at any time of such cause of suit accrued, be beyond sea, then the person intitled to such suit may bring an action after the return of such person, so as it be within such time of the return as is limited by the 21 *Jac. c. 16.* - *Stat. 4 A. c. 16.*

## Lunatics.

**I**N case any person, who shall be found a lunatic by inquisition taken by virtue of a commission under the great seal, or any lunatic or person under a phrenzy, whose person and estate by virtue of

## Money brought into Court.

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of an act of parliament shall be committed to the care and custody of particular trustees, shall marry before he or she shall be declared of sound mind by the lord chancellor of *Great Britain*, &c. for the time being, or such trustees as aforesaid, or the major part of them respectively, every such marriage shall be void. *Stat. 15, 16 G. 2. c. 30.*

Lunatics and ideots, seised or possessed in fee, or for lives or years, in trust, or by way of mortgage, may by the direction of the court of *Chancery*, make conveyances, surrenders, 29 *G. 2. c. 31.* or assignments of such estates. *Stat. 4 Geo. 2. c. 10.*

## Money brought into Court.

**T**HERE must be a motion to bring money into court, which must be made before the defendant has pleaded, for the common rule is, That the defendant have leave to bring (so much) money into court, and unless the plaintiff accepts it with costs to be taxed in discharge of the suit, the sum so paid into court shall be struck out of the declaration, and paid out of court to the plaintiff or his attorney; and upon trial, the plaintiff not to be permitted to give evidence for such sum.

And the plaintiff's attorney must be served with a copy of such rule, and at the same time the general issue delivered to him; and if he accepts of the money in full discharge, the costs must be paid to the time he takes it; but if he will not accept of it in full discharge, he may take the money out of court in part of his demand, and proceed in his action, but if on the trial he has not a verdict for more than what was paid into court, he will be nonsuited, and must pay costs to the defendant.

The party bringing money into court, must pay to the secondary (or to the signer of the *latitat* for him) for keeping the same 20 s. for every 100 l. and after that rate for a greater or less sum. If under 10 l. to be paid 2 s. *Reg. E. 5 Jac. B. R.*

Mo:—

## Mortgages.

**I**F, where lands are mortgaged, the mortgagor make a second mortgage thereof, without discovering the first mortgage, he shall forfeit his equity of redemption; and the second mortgagee shall be intitled to redeem, &c. *Stat. 4 & 5 W. & M. c. 16.*

When an ejectment is brought for recovering mortgaged lands, &c. if the person having right to redeem pay the mortgagee, or bring into court all the principal money, interests and costs, it shall be a full satisfaction of the mortgage; and the mortgagee shall reconvey the lands, and deliver up the deeds, &c. And on a bill in *Chancery* to foreclose the equity of redemption, the court may make orders on the defendant's application, before the cause is brought to a hearing. 7 G. 2. c. 20.

## Motions.

**T**HE courts will enlarge no rule for shewing cause, unless notice be given of motion to enlarge such rule, and affidavit made of such notice. And the court will not set aside any judgment for irregularity, unless motion be made to the court for that purpose, before a writ of inquiry executed. *Notice fix'd up in the prothonotaries offices. M. 2 G. 2. C. B.*

## Non Pros'.

**I**F declaration be not delivered or filed either of the term the process is returnable, or before the end of the following term, *non pros'* may be signed. No rule is given to declare. *B. R.*

Upon all process returnable on any return in any term, the plaintiff has liberty to the end of the ensuing term to deliver his declaration to the defendant's attorney, or of leaving it in the office; and the defendant's attorney having entered his appearance

ance with the proper officer, as of the term in which the process is returnable; and at the end of the ensuing term, or in 4 days after the end thereof, having given a rule to declare, and called on the plaintiff's attorney or clerk in court (if he can be found,) the defendant any time in the vacation of such ensuing term after the rule for declaring is out, may sign *non pros* for want of a declaration, and not afterwards, and the plaintiff shall not without leave of the court have any longer time to declare in than as above, other than the time limited by the defendant's rule. *Reg. H. 9 A. C. B.*

Declarations must be demanded by a note in writing. *Per notice in the offices, M. 1 G. 2. C. B.*

Notices.

B. R.

**I**F a cause has been 4 terms after issue joined, a term's notice of trial must be given. If less than four terms after issue joined, 8 days notice is sufficient, for trial at any assizes in *England*.

Eight days notice to be given of trial in *London* and *Middlesex* exclusive of the day that notice is given, if defendant lives within 40 miles from thence, but if 40 miles, or above, 14 days exclusive; and if due notice be not given, the court on motion will grant a new trial. 2 *Lilly* 242. *Vid. the late stat. post.*

And

C. B.

**N**otices of trials or inquiries in *London* or *Middlesex*, (the defendant dwelling within 40 miles of *London*) to be 8 days exclusive of the day whereon notice is given. And if the defendant lives above 40 miles from *London*, 14 days exclusive. *Vid. stat. post.*

Eight days notice exclusive to be given upon trials in the country, and upon writs of inquiry, in dower and waste, and all other inquiries of damages. And if plaintiff give notice of trial, and proceeds not, the plaintiff not to take it down to trial without new



## B. R.

And if notice of trial be given in *London* or *Middlesex*, and not tried that sitting, the plaintiff may try it the next sitting upon two days notice; but if not tried at the next sitting, then new notice is to be given as at first, viz. 8 days. 2 *Lit. Abr.* 236.

If one gives notice of trial to the defendant, and does not try his cause at the day appointed, but defers it longer than one term after, he must give a term's notice before his trial; but if he tries it the next term after, there needs no new notice, for if the plaintiff tries it not, then the defendant may try it by proviso. *Trin.* 1652. *B. R.* 2 *Lit. Abr.* 240.

Where the plaintiff concludes to the country upon the defendant's plea, and gives notice of trial upon the paper book, and thereupon the defendant, to hinder the trial of the issue, demurs upon the replication, and the plaintiff joins in demurrer, and obtains judgment; the defendant's attorney shall accept notice of

2

executing

## C. B.

new notice to be given, as is before expressed, unless by consent or rule of court. But in *London* or *Middlesex*, if notice of trial be given for one sitting, and the plaintiff be not provided to proceed; if he give notice before that sitting, that he will try it the next sitting, that to be held convenient notice. In case of such warning and no proceeding, defendant on motion to have his costs for his former attendance, to be taxed by the prothonotary; unless the plaintiff give the defendant warning in convenient time, that he would not proceed; or shew cause to be allowed by the court in excuse of such costs. And if the plaintiff give notice of trial and proceed not, the defendant may take it by proviso, giving notice 8 or 14 days, as the case requires. And in *London* or *Middlesex* if no warning for a trial, then the defendant not to take it by proviso, to try it the same term; but afterwards he may, giving 8 or 14 days notice,

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B. R.

executing the writ of inquiry, from the time of giving such notice of trial upon the paper book. *Reg. H. 8. G. 1.*

C. B.

notice, as the case requires. And notice of trial given to the attorney of the adverse party good. And oath made of want of notice to the attorney, to turn

the proof of notice given to the party, upon him that brought it down to trial in that case. And if issue be joined above a year since, in any case, then one term's notice to be given of the trial. *Reg. M. 1654.*

*Note*; A term's notice must be given before the effoin day of the term.

In all cases where the plaintiff concludes *ad patriam*, the defendant's attorney or clerk in court shall accept notice of trial upon the back of such pleading, whether the same be delivered to the defendant's attorney or agent, or left in the proper office, where the same may be left by the course of the court. And such notice of trial shall be as good and effectual, as if issue had been actually joined. *Reg. T. 2 G. 1. C. B.*

The last mentioned rule was made to prevent delays in trying causes where the plaintiff in pleading concludes *ad patriam*, the defendant not being obliged to join issue, or demur till a 4th day rule to rejoin, &c. expired; and plaintiff's being delayed, by reason of the defendant's attorney not being obliged to take the like notice of executing writs of inquiry, it was afterwards ordered that,

Where the plaintiff concludes *ad patriam*, and gives notice of trial upon the back of his pleading, if the defendant does not join issue on such pleading before the rule be out, in such case after judgment obtained, the defendant's attorney shall accept notice of executing a writ of inquiry, from the time that notice of trial was given on the back of such pleading as abovesaid. *R. H. 6 G. 1. C. B.*

And where defendant demurs to the declaration, plaintiff being delayed, because of the defendant  
not

not being obliged to accept notice of inquiry till after judgment obtained, it was also afterwards ordered, that,

Where the defendant demurs to the plaintiff's declaration, the defendant's attorney or clerk in court, shall accept notice of executing the inquiry on the back of the joinder in demurrer. And where the defendant pleads such a dilatory plea that the plaintiff is obliged to demur to, in such case the defendant's attorney or clerk in court shall accept notice of inquiry on the back of such demurrer. *Reg. T. 10 G. 1. C. B.*

Countermand of trial at the assizes not good unless notice be given *two days* before the commission day. *Reg. M. 3 G. 1. C. B.*

But by *stat. 14 G. 2. c. 17.* No indictment, information, or cause whatsoever, shall be tried at *nisi prius*, or at the sittings in *London* or *Westminster*; where the defendant lives above 40 miles from thence, unless notice of trial in writing has been given at least (a) 10 days before such intended trial. And in case any party has given such notice, and does not afterwards countermand the same in writing, at least 6 days before such intended trial, he shall pay the like costs and charges as if the notice of the trial had not been countermanded.

All declarations and pleadings to be delivered, all demands made, and all notices given, before 9 o'clock in the evening. *Reg. E. 10 G. 2. C. B.*

Defendant shall be intitled to costs, if plaintiff don't execute such writ of inquiry pursuant to notice, or countermand the same in due time. *Reg. T. 13 G. 2. C. B.*

Over,

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(a) *Q. How much was the practice considered or understood, since 14 days notice by the rules and practice of B. R. and C. B. were to be given before the making the said act.*

## Dyer,

OF writs, bonds, and other deeds to be demanded by a note in writing. *Notice in the prothonotaries offices, M. 1 G. 2.*

## Paper-Books.

B. R.

UPON reading any record in court upon demurrers, special verdicts or writs of error, and thereupon a day is given to hear counsel on both sides, books shall be delivered by the attorney of either party to the judges of this court, 4 days before the day so appointed, and the exceptions which are insisted on to be marked in the margin of the books. *Reg. E. 2 Jac. 2.*

In all cases in the paper, where books ought to be delivered to the judges, the plaintiff, or his attorney, shall give them to the chief justice and senior justice, and the defendant or his attorney to the other judges; and if one of the parties neglects, it shall be done by the other, at the costs of the party that neglects, before any argument shall be made at bar. *Reg. M. 17 C. B. R.*

C. B.

THE plaintiff's attorney shall deliver all the demurrer books to the lord chief justice and the rest of the justices, and the defendant's attorney shall pay the plaintiff's attorney for two of the said books, 2 days at least before the day appointed for argument, and the defendant shall not be heard by his counsel, when the cause comes on to be argued, unless such payment be made. *Reg. M. 6 G. 2.*

No cause in any term to be put in the book of this court to be argued after the last day of arguments, unless the court be moved thereupon, and shall order it. *Reg. T. 12 G. 2.*

## Pleas.

In all paper-books to be made up by the clerk of the paper, he ought to subscribe the names of the council who signed the pleadings, as well on the part of the plaintiff as of the defendant; and in all books to be delivered to the judges the names of the counsel who signed the pleadings ought to be subscribed. *Reg. E. 18 Car. 2.*

## Pleas.

*Vid. tit. Abatement, bar, declarations.*

*B. R.*

**W**HERE a declaration is delivered before the effoin-day of the term, defendant has 4 days in that term to plead in abatement, without an imparlance.

Only 4 days time shall be allowed for defendants from the time of giving rules to plead. *Reg. T. 1 G. 2.*

*N. B.* Sunday, or any holiday on which the court does not sit, is reckoned a day within this rule, except the Sunday or such holiday happens to be the last of these 4 days.

Pleadings which ought to be left with one of the clerks of the papers, or a copy of such pleadings not to be delivered or received, unless signed by one of the said clerks. *Reg. T. 2 J.*

*T.*

*C. B.*

**T**HE plaintiff having declared and given rule to plead, the defendant is to deliver his plea in writing to the plaintiff's attorney; but if not to be found, or being found refuses to accept it, then the plea may be left in the office to save judgment. *Reg. M. 1654.*

Pleas, replications, and other pleadings, to be demanded by note in writing. *Per notice in the prothonotaries offices, M. 1 G. 2. But*

Where the declaration is filed, and notice thereof given, there is no need of further calling for a plea. *Reg. M. 1 G. 2.*

All pleadings to be delivered, all demands made, and all notices given, before 9 o'clock in the evening. *Reg. E. 10 G. 2.*

*De.*



**B. R.**

*T. 16 C. 2. M. 2 W. & M.*

To be left, if the plaintiff's name begins with

A. *with Mr. Benton,*

B. *with Mr. New,* and so alternately thro' the alphabet.

Special pleas or demurrers not to be received by the clerk of the papers, before they be signed by counsel.

And the clerks shall subscribe the name of such counsel to all copies of pleas and paper books by them made. Attornies to do the like in books for the judges. *Reg. E. 18 C. 2. B. R.*

**C. B.**

Defendant not to amend his plea till appearance be entered. *Reg. E. 24 C. 2.*

Rules to declare and plead not to be given after 3 days exclusive after the end of any term, and such rule to be out at 4 days inclusive of the day wherein the same is given. *Reg. M. 1654.*

**Posteas.**

**B. R.**

**E**VERY attorney who receives any *posteas* from the clerk of the assizes, or other officer for returning *posteas*, shall get it marked by the clerk of the *posteas* (Mr. Haddock) within 2 days after he receives it. *Reg. T. 2 Jac.*

**C. B.**

**A**fter final judgment has been signed upon *posteas* and inquisitions, they shall be immediately delivered to the clerk of the judgments of the respective prothonotary, and shall not afterwards be taken out of the office without leave of court. *Reg. T. 13 G. 2.*



## Prisoners.

B. R.

*Proceedings against them.*

**C**OPY of declaration not to be delivered to a prisoner in custody, before the day of the return of the process, upon which the defendant was taken or charged in custody. *Reg. E. 5 W. & M.*

*Note* ; Declaration is commonly delivered to the gaoler or turnkey ; there must be one copy on double peny stamped parchment to file, and two on double stamped paper, one to deliver, and one to annex to the affidavit of delivery.

Rule to plead not to be given till an affidavit be filed with the clerk of the rules, of the delivery of the declaration, and the time when, and to whom delivered, and that the defendant was arrested or charged in custody, by process of this court, returnable before the delivery of such copy ; (*see the form in the first part*) and the time, when such affidavit was filed, to be entred upon the

C. B.

*Proceedings against them in county gaols.*

**C**OPY of declaration not to be delivered to a prisoner in custody until after the process upon which the prisoner is taken or charged in custody, is returnable. *Reg. E. 5 W. & M.*

No rule to be given for the defendant to appear and plead to a declaration against him, till an affidavit be filed with the secondary of the delivery of the copy of the declaration, and the time when, and the person to whom the same copy was delivered ; (*see the form in the first part*) and a copy of the said affidavit to be produced to the prothonotary before judgment signed, together with a certificate from the proper officer, that no appearance is entred with him. *Ibid.*

If a copy of the declaration be delivered before *Mich. Pasc.* or *Crofin. Animar.* and affidavit thereof made and filed, and the defendant

B. R.

the said affidavit by the clerk of the rules, and a copy of such affidavit to be produced to the prothonotary or secondary before signing judgment. *Ibid.*

*Note;* The said copy of the affidavit must be on a double six penny stamp, and annexed to a copy of the declaration; the master will thereon give a rule to appear and plead, and the clerk of the rules enters it in his paper; but if the defendant is in custody of the marshal of B. R. no such affidavit is necessary, for a rule to plead may be given with Mr. Cooper of course.

Upon mesne process returnable the first day of *Easter* or *Michaelmas* term, if a copy of the declaration be delivered before *Mens. Pasc.* or *Crastin. Animar.* and affidavit thereof made and filed, and the defendant does not appear before the end of 10 days after *Easter* or *Michaelmas* term respectively, judgment may be entered against him, if rules have been given; but if he does appear

C. B.

defendant does not enter appearance with the proper officer within 10 days after *Easter* or *Michaelmas* terms respectively, judgment may be entered against him upon the certificate as aforesaid, if rules have been given; but if he does not enter appearance before the end of 10 days after the term, he shall imparl until the next term unless the action be in *London* or *Middlesex*, and the defendant be in prison within 40 miles of *London* or *Westminster*, then, tho' he does appear before the expiration of 10 days after the end of the term, he shall plead 2 days before the effoin day of the next term, and in default thereof, rules having been given, judgment may be entered against him, as aforesaid. *Ibid.*

If a copy of the declaration may be delivered on or after *Mens. Pasc.* in *Easter* term, or *Crast. Animar.* in *Michaelmas*, or in *Hilary* or *Trinity* term, and the plaintiff thereupon gives rules to appear

## B. R.

pear before the end of 10 days after the term, he shall imparl till the next term; unless the action be in *London* or *Middlesex*, and the defendant be in prison within 40 miles of *London* or *Westminster*; then, tho' he does appear before the expiration of 10 days after the end of the term, he shall plead 2 days before the escoin day of the next term; and in default thereof, rules having been given, judgment may be entered against him as aforesaid. *Ibid.*

If a copy of the declaration be delivered on or after *Mens. Pasc.* in *Easter* term, or *Craft. Animar.* in *Michaelmas* term, or in *Hilary* or *Trinity* term, and thereupon the plaintiff gives rules to appear and answer, then if the defendant appears 2 days before the escoin day of the next term, he shall imparl until the said next term: But if he does not appear within that term, judgment may be given against him. *Ibid.*

If a writ be returnable in any term, and

## C. B.

pear and plead, if the defendant enters his appearance 2 days preceding the escoin day of the next term, he shall imparl until the said next term; but if he does not appear within that time, judgment may be entered against him, as aforesaid. *Ibid.*

If a writ be returnable in one term, and a copy of the declaration be delivered before the escoin-day of the next term, the plaintiff in such next term may give rules to appear and plead; and if the defendant does not appear and plead by the time the rules are out, judgment may be entered against him. *Ibid.*

If declaration be not left in the office before the end of the next term after the process is returnable, and an affidavit made and filed as aforesaid, before the end of 20 days after such term (*Easter* term excepted, and within 10 days after *Easter* term) the prisoner shall be discharged upon entering appearance, by *superse-deas*. *Ibid.*

But

B. R.

a copy of the declaration has been delivered before the effoin-day of the next term, the plaintiff in such next term may give rules to appear and answer; and if the defendant does not appear and plead upon the expiration of the rules, judgment shall be given against him. *Ibid.*

If declaration be not filed before the end of the next term after the writ or process (by which the prisoner was taken or charged in custody) is returnable, and an affidavit made and filed in manner aforesaid, before the end of 20 days next after such term, the prisoner shall be discharged by common bail signed by one of the justices of this court. *Ibid.*

If a gaoler or keeper of a prison, having received a copy of a declaration against a prisoner in his custody, suppress the same, and not deliver it forthwith to such prisoner, an attachment shall be issued against him. *Ibid.*

C. B.

*But see of discharging prisoners, post.*

If any gaoler or keeper of a prison, having received a copy of a declaration against any prisoner in his custody, shall suppress the same, and not deliver it forthwith to such prisoner, an attachment shall be issued against him. *Ibid.* For the time of declaring, proceeding to judgment or execution, vid. post, concerning discharging prisoners.

*Proceedings against them in the Fleet.*

No copy of a declaration delivered at the Fleet prison against a prisoner there, shall be a sufficient charge to hold such prisoner to bail, or to retain him in custody for want of bail; unless an affidavit that the plaintiff's cause of action amounts to 10*l.* or upwards, be first made and filed in the prothonotary's office, and an indorsement made by the said prothonotary or his deputy, upon such copy of a declaration,

Of



## B. R.

*Of discharging prisoners.*

If a defendant be committed into the custody of the marshal, or be charged in his custody, or be arrested or committed by process of this court, into the custody of any sheriff, or other officer, at the suit of any plaintiff, and shall remain in custody 2 terms, and the plaintiff does not declare against him within that time; such defendant after the end of the second term after such imprisonment (N. B. *The term where-in the writ is returnable is accounted one*) shall be discharged out of prison, upon filing common bail, signed by one of the justices of this court, without giving notice to the plaintiff or his attorney. And if the plaintiff declares and does not proceed to trial or judgment within 3 terms after declaration delivered; or if plaintiff obtains judgment, and does not charge the defendant in execution within two terms after judgment obtained, such defendant

## C. B.

tion, signifying the sum of money specified in such affidavit, for which sum so indorsed bail shall be required and for no more. *Reg. H. 8 G. 2. C. B.*

N. B. The declaration must be entered before it be delivered to the clerk of the papers of the *Fleet*. And there is no need of process to charge the defendant in custody there, as there is when in *Newgate, Ludgate* or other county gaols.

*Of discharging them for want of declaration.*

If defendant be committed to prison by process out of this court, or *habeas corpus*, the prisoner entering his appearance, and giving a rule to declare, the plaintiff not declaring before the end of the next term after the commitment, the defendant to be discharged by *supersedeas* in the end of the next term, and liberty for the plaintiff to declare upon that appearance the next term after that at farthest. *Reg. M. 1654.*

If



**B. R.**

dant may file common bail, or have a *superfedeas*, to be granted by a judge, if cause be not shewn to the contrary by the plaintiff or his attorney, on notice given to either of them by the defendant; and oath thereof to be made if the plaintiff does not appear to shew cause as aforesaid. *Ibid.*

**C. B.**

If the plaintiff does not remove the defendant to the *Fleet* by *habeas corpus*, and the prisoner enter appearance (*as mentioned in the former part of this rule under the title habeas corpus*) he may be discharged by *superfedeas* in the end of the third term after the arrest, and the plaintiff may declare upon such ap-

pearance the term following, but not after; but if such prisoner cause appearance to be entered for him by attorney, and cause notice thereof to be given to the plaintiff or his attorney, and if oath thereof be made in writing, and filed in court, unless the plaintiff declares against him in the term after such appearance, he may be discharged by *superfed as*, so as oath be made by the attorney for the defendant, that no declaration had been delivered or tendered to him. And the plaintiff may declare against him the term next after such appearance entered, but not afterwards. *Reg. H. 14 & 15 C. 2.*

If a defendant render himself or be rendered to the *Fleet* in discharge of his bail, where there was no declaration against him before such render, unless the plaintiff declares against him within two terms after such render; and where any declaration has been before delivered, or judgment has been had before render, unless the plaintiff proceed to judgment within 3 terms after render (the defendant having appeared), and charge such defendant in execution within 2 terms after judgment obtained, such defendant may be discharged out of custody, by *superfedeas*, to be allowed by a judge, if cause be not shewn to the contrary by the plaintiff or his attorney, upon notice to either

*After sur-render.*

*Declaration.*

*Judgment.*

*Execution.*

## Privileged Persons.

of them given by defendant's attorney or agent, and oath made of such notice given. *Reg. E. 8 G. C. B.*

*General rule.*

*Judgment.*

*Execution.*

If plaintiff declares against any defendant in custody of the warden of the *Fleet*, or of any sheriff, or other officer, and does not proceed to judgment within 3 terms after declaration delivered, inclusive of the term in which the declaration is delivered, the defendant having appeared; or after judgment does not charge the defendant in execution within 2 terms after judgment, including the term in which the judgment shall be signed, then the defendant may be discharged out of custody by *superfedeas*, to be allowed by a judge, if cause be not shewn by the plaintiff or his attorney, why the plaintiff had not proceeded to judgment or execution, upon notice to either of them given by the defendant's attorney or agent, and oath made of such notice given. *Reg. E. 8 G.*

## Privileged Persons.

**A** Suit in any court of record or equity may be commenced against a peer, member of the house of commons, or their servants, or any other person intitled to privilege of parliament, immediately after the dissolution or prorogation of parliament, until a new one meets, and immediately after the adjournment of both houses for above 14 days till they re-assemble. And if any person have cause of action or complaint against a peer, after such dissolution, &c. he may have such process out of the *K. B. C. B.* and *Scacc.* as he might have had out of time of privilege, and against any knight, citizen or burgess, or other person intitled to privilege of parliament after dissolution, &c. by summons and distress infinite, or by original bill and summons, attachment and distress infinite, until they enter a common appearance or file common bail: And any person in the times aforesaid may exhibit a bill against any peer, &c. in the chancery, exchequer or duchy court, and proceed thereupon

thereupon by letter of *subpoena* as usual, and upon leaving a copy of the bill with the defendant, or at his last place of abode, may proceed thereon; and for want of appearance or answer, or for non-performance of any order or decree, may sequester the estate of the party, but shall not arrest the body. And where any plaintiff is stayed by privilege of parliament, he shall not be barred by the statute of limitation. And no suit against the king's original and immediate debtor, or against any person liable to render account to his majesty for any part of his revenues, or other original and immediate duty, or the execution of such process, shall be impeached or delayed by privilege of parliament; yet so that the person of such debtor or accountant being a peer shall not be arrested; or being a member of the house of commons, shall not be arrested during his privilege. *Stat. 12 G. 3. c. 3. 11 G. 2. c. 24. Vid. tit. Arrests (D).*

## Promissory Notes.

**A**L L notes signed by any person or persons, body politick or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant or trader, who is usually intrusted by them to sign such promissory notes for them, whereby such person, &c. shall promise to pay any other person, &c. or order, or bearer, the money mentioned in such note, shall be construed to be by virtue thereof due and payable to such person, &c. to whom the same is made payable. And such note payable to such person, &c. or order, shall be assignable over in manner as inland bills of exchange are, by custom of merchants; and the person, &c. to whom the money is payable, may maintain an action for the same, as they might upon such bills of exchange. And the person, &c. to whom assigned or indorsed, may maintain an action against the person, &c. who signed, or any who indorsed the same, as in cases of inland

Record of *Nisi Prius*.

land bills of exchange, and recover damages and costs of suit, and in case of nonsuit or verdict against the plaintiff, the defendant shall recover costs. Such actions shall be brought within the time limited *per* 21 *Jac. c.* 16.

No body politick shall have power to give out notes other than they might before this act. *Stat.* 3 & 4 *A. c.* 9. § 1, 2, 3.

See title *Bills of Exchange*.

Record of *Nisi Prius*.

Vid. *Trials*.

*B. R.*

**R**ecord of *nisi prius* not to be sealed, un'til the issue, or part thereof, be entred upon a numbered roll; and such issue shewn to the secondary, and by him signed. *Reg. T.* 1 *Jac.* 2.

Records of *nisi prius* in *London* or *Middlesex* to be sealed on or before the respective days appointed in the sittings paper for their trial. *Reg. E.* 7 *G.*

Record for trial at the assizes not to be sealed after the end of three weeks from the end of the term. *Reg. T.* 31 *C.* 2.

Attornies of this court who are named in any record of *nisi prius*, and attends himself at the assizes, shall pay more for putting in the record than

*C. B.*

**I**ssues to be tried by *nisi prius* in *London* or *Middlesex*, upon a record of a precedent term, the copy of the issue to be brought to the clerk of the treasury, for the ingrossing the record 4 days at least before the day of trial. *Reg. M.* 1654.

Record not to be signed before the issue be entered upon the roll. *Ibid.*

The prothonotaries to take care that every record of *nisi prius* signed by them, be ingrossed in a fair legible character, and so entered on the roll, and every pleading to begin with a new line, and the first word thereof in a greater character than the rest. And in all actions that have divers narres to be



B. R.

C. B.

than the attornies of the common pleas do in like cases. *Reg. E. 13 Jac.*

be figured in the margin of such record; or the prothonotary not to sign the same. And the clerks of the treasury

that ingross records of *nisi prius*, to take the same care of all records made out of the treasury. And the records to be of the same breadth as the rolls. *Reg. T. 29 C. 2. C. B.*

Records for trial at the assizes to be signed by the prothonotary, and signed and sealed by the clerk of the treasury, within 3 weeks after the end of every *Hilary* and *Trinity* terms, and not afterwards, except for reasonable cause a special warrant for the same be obtained. *Reg. 29 C. 2. C. B.*

The clerk of the treasury shall not sign or seal any record of *nisi prius* unless first signed or stamped by the clerk of the warrants, that it may appear that warrants of attorney are filed. *Reg. H. 2 & 3 Jac. 2. C. B.*

And the clerk of the warrants is to attend the treasury where the records are sealed, 3 weeks after every issuable term, or so long as records are sealed without a judge's warrant, there to receive and take the said warrants of attorney. *Reg. H. 2 & 3 Jac. 2. C. B.*

## Recoveries.

Common recoveries are valid without the surrender or concurrence of lessees for life; provided that the person to the first estate for life, or other greater estate in remainder next after such lessee shall join in making a tenant to the *præcipe*. After twenty years possession, the deed making a tenant to the *præcipe*, and declaring the uses of a recovery, shall be evidence that the recovery was duly suffered, in case no record of the recovery can be found. Every recovery after twenty years shall be deemed valid, if it appears upon the face of it that there was a tenant to the writ; and if the



## Returns of Writs.

the person joining in such recovery had a sufficient estate, and had a sufficient power to suffer the same, notwithstanding the deed making a tenant to the *precept* be lost. Every recovery shall be valid, notwithstanding the fine or deed making the tenant to the writ was levied or executed after judgment given in the recovery; if levied or executed before the end of the term. *Stat. 14 Geo. 2. c. 20.*

By *stat. 24 G. 2. c. 48.* for the abbreviation of *Mich.* term, it is enacted, for the more speedy perfecting recoveries, that from and after the feast day of *St. Michael 1752* all and every writ of summons shall be abridged to four returns inclusive, therefore the summons must now be returnable the fourth return after the return of the writ of entry, including the return of the writ of entry for one; as if the writ of entry is returnable on the morrow of *All Souls*, then the summons must be returnable from the day of *St. Martin* in fifteen days.

*N.B.* It is likewise further enacted by the said act, That from and after *Mich. 1752* all writs and process hereafter to be made out of any of his majesty's courts at *Westminster*, and having day from the fourth day of the morrow of the *Ascension*, to the morrow of the *Holy Trinity*, shall be good and effectual, notwithstanding there be not fifteen days between the teste and the return of the said writs. *Attorney's Pract. Epitomized, p. 26.*

## Returns of Writs.

**I**F sheriffs, under sheriffs, bailiffs of liberties, and their deputies, and other bailiffs of sheriffs, &c. wilfully delay the execution or return of any process or execution, or shall take any undue fees for the same, or shall give notice to the defendant, thereby to frustrate the execution of any process or writ, or having levied money, shall detain it in their

their hands after the time of the return of their writs, besides the ordinary course of amerciaments (the contempt or misdemeanor appearing) an attachment, information, commitment or fine to be, as the case requires; as well in the case of a late sheriff, &c. as of the present; and sheriffs on taking excessive fees for executing writs of possession, or restitution of possession, to be punished on complaint. *Reg. M. 1654 C. B.*

If a sheriff, under sheriff, or other officer having the return of process of this court, or of any precept or warrant thereupon, shall neglect or refuse to return the same within 6 days after service of a rule for that purpose, he shall be liable to pay the costs occasioned by such neglect, to be taxed. *Reg. H. 8 G. C. B.* See title **Sheriff**.

**Rolls.**

*B. R.*

**R**ECORD of  *nisi prius* is not to be sealed or passed at the  *nisi prius* office by the  *custos brevis*, or any clerk of that office, before the issue in that cause be fairly entered on record, or an *incipitur* thereof made; and such entry or *incipitur*, with the record of  *nisi prius* to be first brought to and signed by the secondary, for which no fee shall be demanded or paid, but the usual fee due to the chief clerk for the entry of such issue on record. *Reg. M. 5 A.*

Judgments to be entered fairly on the roll,  
or

*C. B.*

**T**HE prothonotaries not to deliver any rolls but to the hands of some known attorney or clerk of their respective offices. *Reg. E. 34 C. 2.*

Rolls not to be delivered to defaulters in not bringing in rolls in due time, until they have brought in such former rolls; and every attorney or clerk who shall receive any roll, plea or common, shall set his hand to the prothonotary's book for the receipt of the same. *Reg. E. 34 C. 2.*

Rolls not to be carried into the country;  
offenders

## B. R.

or an *incipitur* thereof, before signed; and the names of the plaintiff and defendant, the county and the nature of the action, with the attorney's name, to be entered in a book to be kept by the secondary, for which nothing shall be paid but the accustomed fee for entering such judgment. *Reg. M. 5 A.*

Rolls to be in a full fair hand, with a margin of an inch at least, and a convenient distance at the top for binding up, and at the bottom, that the writing be not rubbed out. *Reg. H. 1657.*

Clerks and attornies who enter causes on record, to enter in the beginning warrants of attorney for plaintiff and defendant. *Reg. E. 4 Jac. 2.*

Attornies shall bring in the rolls of *Trinity*, *Michaelmas* and *Hilary*, before the escoin day of every subsequent term; and the rolls of *Easter* term before the first day of *Trinity* term. *Reg. M. 5 A.*

## C. B.

offenders to be proceeded against for contempt. *Reg. M. 1654. E. 34 C. 2.*

Issues to be entred of the term they are joined, and not of a subsequent term; and prothonotaries are not to sign any record of *nisi prius*, until the same or an *incipitur* be entred on record, and the fees paid for the entry. *Reg. E. 5 W. & M.*

Rolls, plea or common of *Easter* term to be brought into the office where they were received at or before the first day of *Trinity* term, the rolls of *Trinity* term at or before *Michaelmas* day, the rolls of *Michaelmas* term at or before the sixth of *January*, and the rolls of *Hilary* term 4 days before *Easter* day. *Reg. E. 34 C. 2.*

The clerk of the escoin, a fortnight within every term, to lay before the court an account of what rolls are wanting, together with the attornies names that took them out of the offices, that the court may proceed against them. *Reg. M. 6 G.*

Scire

## Scire Facias.

B. R.

*Alias scire facias* not to be issued till the first be returnable. *Reg. T. 8 W. 3.*

Every writ of *scire facias*, of which notice shall be given to the defendant, shall be delivered to or left in the

C. B.

*Scire facias* to be entered in the prothonotary's office on the remembrance, which will not be lent out for that purpose. *Notice in the offices, T. 10 G. 2.*

sheriff's office 4 days before the return of such writ, exclusive of the day on which such writ is returnable. And every first writ of *scire facias* on which a *nihil* is returned, shall be delivered to or left in the sheriff's office some time before the return. And every writ of *alias scire facias* shall be delivered to or left in the sheriff's office 4 days exclusive before the return. And every sheriff shall indorse on the writ the day on which it was delivered to him, or left in his office. *Reg. E. 5 G. 2.*

## Sheriff.

**S**heriffs at the expiration of their office are, by indenture and schedule, to turn over all writs and process unexecuted to the succeeding sheriff, who is to execute and return the same. And no sheriff is to be liable to be called upon to make a return of any writ or process, unless he be required so to do within six months after the expiration of his office. 20 Geo. 2. c. 37.

## Trespas.



## Trespas.

## (A) Who shall have it.

**H**E that taketh only the profit of the soil of another's land, shall not have trespas *quare clausum fregit*, 15 Hen. 7. 14. because he hath no interest in the soil.

He that hath certain acres of land *annuatim*, shall have trespas, for he hath a term in those acres of land.

Admini-  
strator.

An administrator shall have trespas for goods of the intestate taken out of the possession of the administrator. *Reg. Orig.* 94. a. 22 *Ed.* 4. 120. pl. 32.

An administrator shall have trespas for goods taken out of the possession of the intestate, in respect of his interest in them. *Nat. Br.* 92. a. 14 *Hen.* 7. 13.

Executor.

An executor shall have it, *per stat.* 4 *Ed.* 3. cap. 6. and the statute of 31 *Ed.* 3. gives the same remedy to an administrator; but this is by the equity of the statute 4 *Ed.* 3. cap. 7. 24 *Hen.* 7. 101. 13. pl. 2.

Admini-  
strator.

An administrator shall have an action of trespas before the administration committed to him; but not against him that justifies under the ordinary, for he was administrator *pro tempore*, 18 *Hen.* 6. 22 pl. 7. 36 *Hen.* 6. 8. a. *Reg. Orig.* 102. b. that is, for goods taken before the administration granted.

Husband  
and wife.

Husband and wife executrix to B. join in trespas for taking the goods during coverture, 21 *Ed.* 4. 5. and good, in respect of the husband's interest in right of his wife, *viz.* in taking her goods.

In a trespas done to the wife sole, who takes a husband, they shall have trespas in both their names, *Nat. Br.* 87. H. *Reg. Orig.* 95. a. for the damages do concern the husband, 21 *Hen.* 6. 30. pl. 16. *Lib. Intra.* 6. 50. c. *sect.* 3. and the count



count shall be *bona & catalla* of the wife. 7 Hen. 7. 2. vide 14 Eliz. Dyer 305. pl. 59. the count, Lib. Intr. 650. c. sect. 3.

Husband and wife may join in trespass for the beating of the wife, 46 Ed. 3. 3. pl. 5. 22 Affize 60, &c. 87. Reg. 105. b. Lib. Intr. 612 and 668. c. sect. 4. for he is damnified by it, as well as his wife, viz. by losing her labour and society.

So for imprisonment of the wife. 5 Rep. 39. a.

But if they join for battery of both, this abates for the battery of the husband, 9 Ed. 4. 54. 3 Ed. 3. Brev. 737. for the battery of the husband is not the battery of the wife; and so as to that, she has no cause of action. And if they brought a trespass for beating and taking away of goods during the coverture, the writ shall say *de bonis* of the husband; for the wife cannot have a property during the coverture. Reg. Orig. 105. b.

And if the husband and wife are beaten, they shall have several actions, Reg. Orig. 105. *quia transgresso personalis* ought to be brought only by the person injured.

Trespass *quare domum suam fregit, & maremum inde asportavit, &c.* being the house of the wife, is good by the husband alone, because he may pull it down and sell it, 43 Ed. 3. 16. pl. 15. & fol. 26. pl. 6. it seems so, because he cannot be sued for it during the coverture.

So for deeds concerning the land of the wife, & Hen. 5. 9. pl. 13. for deeds are chattels, though they concern the realty.

So for taking away of his wife and his goods, Nat. Br. 89. o. 43 Ed. 3. 23. pl. 15. 13. Reg. Orig. 97. a. for this is given by Westm. 1. cap. 12. & West. 2. cap. 34.

A. lets land to B. for to sow, and A. to have the moiety of the corn, yet B. cannot have trespass *quare clausum fregit* against him for wasting of the corn, for he hath interest in the whole crop, Hill. 30 Eliz. Hare versus Oakley. And although this was not pleaded in abatement, yet the special matter being found, the plaintiff shall not have judgment,

judgment, because it appears to the court, they cannot be disjoined to have an action in such form. For they are upon the matter joint-tenants of the land.

*He to whose use.*

He to whose use, shall not have trespafs in his own name, but in the name of the feoffees, 17 Hen. 7. 41. pl. 2. for the estate in law is in them.

*Copyholder.*

A copyholder shall have trespafs for the breaking his close, and cutting the trees, 4 Rep. 21. b. No. Lib. Intr. 644. c. sect. 3. for he hath an interest in both to some purposes.

He shall have it against the lord, 4 Rep. 22. a. for the lord in this respect is in no better condition than a stranger.

*Executor.*

An executor shall have trespafs for goods taken out of the possession of the testator. Nat. Br. 87. c. Reg. 98.

Executor shall have trespafs *de bonis testatoris asportatis in custodia sua existen.* Reg. Orig. 94. a. 2 Hen. 7. 15. 6 Ed. 4. 1.

A. takes administration of the goods of B. and proves a will, by which he was made executor, and brought trespafs against A. for the goods; it lies, although the administration was not repealed; for the administration was void from the beginning, Mich. 12 Jac. B. R. Fisher and Young, because there was a will made.

*Gaoler.*

Trespafs lieth by a gaoler against one that takes a prisoner from him; for the gaoler is liable for the person; but a good bar, that he is not gaoler, because it is the ground of the action. 4 Ed. 4. 6. pl. 7. & fol. 44. pl. ult.

*Church-wardens.*

Churchwardens shall have trespafs for the goods of the church taken in their time, or in the time of their predecessors. Nat. Br. 91. k. 10 Hen. 7. 9. pl. 5. for they are intrusted with them to the use of the parishioners.

*Grantee.*

A grantee of herbage of land shall have trespafs *quare clausum fregit* for the grass, but not for the other profits of the land, as fruit-trees and the like, Dyer 285. pl. 40. for he hath nothing but the herbage granted unto him.

The

The heir shall have trespafs for taking of a deed *Heir.* concerning land to him descended, and it is good, although he doth not say, *scriptum suum*, because of necessity it must belong to him, 1 *Ed.* 3. 18. *pl.* 11. for it goes along with the inheritance.

But not against an executor that taketh a box with deeds. 1. Because the box appertaineth to him. 2. He hath not knowledge what was in the box. 3. The heir hath no other remedy against him, *scilicet* a detinue, 43 *Ed.* 3. 24. *pl.* 3. because the box and deeds come to him in a lawful way, though he cannot justify the detaining.

But it lies against an executor for taking away a furnace fixed, or fatts fixed to the freehold, or pales fastened, windows, doors, evidences loose, 21 *Hen.* 7. 26. *pl.* 4. because they all belong to the freehold as part of it.

It lies for an heir against an executor for taking fishes out of a pond. *Mich.* 36 *Eliz.* B. R. *Rot.* 25.

So for deer or pigeons, *vid.* *Affize* 27. *pl.* 29. but not tame deer or tame pigeons; the one is as it were an inheritance, the other a chattel.

The lessor excepts the trees, he shall have trespafs *quare clausum fregit*, *Dyer* 19. *pl.* 48. 8 *Rep.* 63. a. against the lessor, if he cut them down. *Lessor.*

A lessor at will shall not have trespafs, although he determines his will, until he enters, 3 *Hen.* 8. 163. *pl.* 4. for before he hath no title.

A. enters upon tenant at will, and subverts the soil, he shall have one action, and the lessor another, 19 *Hen.* 6. 45. *pl.* 94. so of a copyholder and lord, 2 *Hen.* 4. 12. 4 *Rep.* 31. a. for as they are both damnified, so it is reason they should both have recompence.

Lessee cuts trees to the intent to repair, the lessor takes them, the lessee shall have trespafs, 44 3. 44. for the damage done him in causing him to lose his labour in cutting of them. *Lessee.*

A stranger cuts trees, the lessee shall have trespafs, and shall recover treble damages, *Doct. & Stud.*

*Stud.* 34. *a.* 23 *Hen.* 8. *Br. Wals.* 138. 44  
*Hen.* 8. 26, because the lessor shall recover so  
 much of the lessee in respect of the waste.

But if the lessor dies, the lessee shall recover but  
 single damages, 3 *Hen.* 8. 163. *pl.* 4. because no  
 more shall be recovered against him by the heir.

*Master.*

1. If the servant be beat the master shall have  
 trespass, *Nat. Br.* 91. *i.* *Reg. Orig.* 102. *a.* al-  
 though he be but a servant at will, 21 *Hen.* 6. 9.  
*a. vide* 11 *Hen.* 4. 2. 2. for the beating of the ser-  
 vant is a damage to the master, and the servant  
 may also have this action.

2. For taking away his apprentice, *Nat. Br.*  
 91. *l.* 8 *Hen.* 6. 28. 21 *Hen.* 6. 31. *pl.* 18.  
 whereby he loseth his service.

*Parson.*

A parson shall have trespass for tithes taken after  
 severance of the 9 parts, 10 *Hen.* 4. 2 *pl.* 2. 21  
*Hen.* 7. 27. *pl.* 5. before any seisure, because it is  
 certain by the severance what was his, and the law  
 casts the possession and property upon him. *Com.*  
 281.

But not of a mortuary before seisure, *Com.* 281.  
*a.* 10 *Hen.* 4. 1. but there is but a bare customary  
 right.

### (B) Against whom it lies.

*Alien.*

**T**respafs lies against an alien. *Digest. Br.*  
 72. *a.*

*Husband  
 and wife.*

If one woman beat another, the husband must  
 be named in the writ, *Reg. Orig.* 105. *b.* *Lib.*  
*Intra.* 612. *a.* *sect.* 11. for he must answer for his  
 wife's behaviour.

*Infant.*

It lies against an infant, *Digest. Br.* 72. *Q.* Of  
 what age. It seems at the age of discretion.

*Executor.*

It lies not against an executor, *quia actio perso-  
 nalis moritur cum persona*, *Doct. & Stud.* 75. *viz.*  
 for a trespass done by the testator, if personal.

*Lord.*

If the lord distrain where there is nothing arrear,  
 and the mesne lord will put his cattle in the pound  
 for the cattle of the tenant, and the lord will not  
 permit



permit him, trespass lies against the lord. 9 Rep. 22. b.

If he labour or kill the distress, 8 Rep. 146. b. trespass lies.

Or if he tie the cattle in the pound, 27 Affize 64.

If he break the hedges or gates, or such like, of the party where he distrains, 48 Ed. 3. 6. pl. 10.

(C) For what it lies.

**F**OR the breaking of a house, Nat. Br. 87. d. 88. a. Reg. Orig. 94. a. the count, &c. Of a mes-  
Lib. Intra. 653. c. sect. 7. suage.

For breaking the door and windows of the house. Reg. Orig. 99. a. Nat. Br. 92. d.

For breaking a close, the count was of a churchyard; for that is a close, because inclosed, 8 Hen. 6. 9. pl. 20. and for digging in it, Reg. Orig. 94. a. 2 Rich. 2. Barr, 237. Nat. Br. 87. b. 90. k. 2. Who shall bring it, whether the parishioners or churchwardens, or the parson or vicar.

For digging my gravel. Lib. Intra. 646. c. sect. 2.

For digging in my land. 9 Rep. 12. a.

For digging in my mine, and carrying it away. Reg. Orig. 104. b. 43 Ed. 3. 35. pl. 53.

For digging in my quarry, Reg. Orig. 105. a. and carrying the stones away.

For hindring working in my mine, Reg. Orig. 104. a. in the digging of lead, coals, &c.

For breaking my bridge, Reg. Orig. 106. a. or a bridge, which I am bound to maintain ratione tenuræ, or otherwise.

It lies upon an entry with force, although the entry be congeable. 9 Hen. 6. 19.

For breaking of my bank, by which my meadow is drowned. Reg. 106. b. 9 Rep. 50. b. Meadow.  
Nat. Br. 88. l.

For digging my meadow. 9 Rep. 12. a.

For



## Trespals.

- Wood.** For entering his wood, and taking away an airy of hawks. *Reg. Orig.* 96. b. 110. b. *Nat. Br.* 86. l.
- For cutting his trees. *Reg. Orig.* 110. a. *Nat. Br.* 98. k. 10 *Ed.* 4. 2. pl. 5.
- For pulling up his trees by the roots. *Reg. Orig.* 93. b.
- For eating up his blades of grass, and springs of his young wood. *Nat. Br.* 87. k.
- Park.** For breaking his park. *Nat. Br.* 87. a.
- For entering his park. 20 *Hen.* 6. 37. pl. 7.
- De malefactoribus in parcis*, upon the statute 21 *Ed.* 1. *Reg. Orig.* 111. b.
- Trespals upon the statute.** The grantee of the herbage of a forest shall have trespals *quare clausum fregit*, against any that takes the grass. 11 *Eliz. Dyer* 285. pl. 40.
- Forest.** For entering his chase. 42 *Ed.* 3. 2. pl. 8.
- Chase.** For hunting in his chase; the count, *Lib. Intr.* 650. c. *sect.* 1.
- Pond.** For fishing in his pond. *Reg. Orig.* 95. b. *Nat. Br.* 87. a. and taking his fish.
- For breaking his pond, by which the water and the fish went out. *Nat. Br.* 87. l.
- Tithes.** For carrying away tithes, severed from the ninth part. *No. Lib. Intra.* 686. c. *sect.* 23. the count. *No. Lib. Intra.* 678. b. *&c.*
- For hindring the parson to carry away his tithes. *Reg. Orig.* 105. a.
- Warren.** For entering his warren. *Reg. Orig.* 93. b. 96. b. 109. b. 110. a.
- Swans.** For taking away swans. 7 *Rep.* 16, 17. 7 *Hen.* 6. 27.
- Toll.** For disturbing him to take toll in a fair or market, or other place. *Reg. Orig.* 103. a. *Nat. Br.* 91. g.
- Wreck.** For taking a wreck of the sea. *Reg. Orig.* 103. 5. 5 *Ed.* 3. 174. pl. 91. without seisure, *Nat. Br.* 91. d. for he who claims the right in it, ought to seise it, that the right may come in question, if it be disputable.
- Felons goods.** For taking felons goods, *Reg. Orig.* 101. a. which belong not to him.

Felons

F  
fu

Felons goods within a hundred, where the lord hath felons goods; if the sheriff takes them, the lord shall have trespafs, *Nat. Br. 91. f.* for the sheriff hath no warrant to take them.

For assault, battery, and wounding, the count, *Battery. Lib. Intra. 668. c. sect. 4.*

For imprisonment until fine be made. *6 Ed. Imprisonment. 3. 208. pl. 2.*

For threatning my servant, *per quod servitium amisi. Reg. Orig. 94. b.* *Servant.*

Assault and battery of his servant, *per quod servitium amisi. Regist. Orig. 102. a. Nat. Br. 91. l.*

For enticing my servant to depart, trespafs lies not, but an action upon the case. *11 Hen. 4. 3. pl. 46.*

For taking away his apprentice. *Reg. Orig. Apprentice. 109. a. per quod, &c.*

For a gaoler for taking away his prisoner. *Reg. Prisoner. Orig. 104. a. 4 Ed. 4. 6. pl. 7. antea.*

Trespafs quare averia cepit, & abduxit. *Reg. Orig. 97. b.*

If conies go out of a warren, any may kill them in his own land, and no action lies, *5 Rep. 104. 43 Ed. 3. 13. pl. 7.* for they cannot be said to have *animum revertendi*, and so the property is gone. *Conies.*

For taking his fish, this is good, although the count be of a hundred fishes, because this word *piscis est nomen collectivum.* *4 Hen. 6. 11. 5 Rep. 35. 21 Hen. 6. 39.* and comprehends any number, as well as one fish. *Fishes.*

For taking away writings in a box. *Reg. Orig. Writings. 110. b. 106. b.*

For taking away deeds, minuments and writings. *Reg. Orig. 111. a.*

For breaking open a chest, and taking away deeds. *36 Hen. 6. 26. pl. 26.*

For taking a chest. *Reg. Orig. 110. b.*

For taking away hay. *Reg. Orig. 102. b.* *Hay.*

For taking away *frumentum*, the writ was *bona & catalla*, and good, *44 Ed. 3. 16. pl. 12.* for *frumentum* is chattels. *Corn.*

- Obligation.** Timber and wood *capt*, & *assort*. the count, *Lib. Intra*. 676. a. *sect*. 7. *Scriptum obligatorium* delivered in nature of an acquittance. 5 Hen. 4. 2. 1 Hen. 7. 14. 3 Ed. 3. 72. pl. 1.
- Will.** *Testamentum abstulit* & *assortavit*. Reg. Orig. 107. b.
- Wine.** Five tons of wine, the writ was *bona* & *catalla*, and good; wine taken and carried away, 39 Ed. 3. 18. pl. 17. *Lib. Intra*. 684. a. *sect*. 1.
- Cloaths.** *Vestimenta*, 11 Hen. 4. 31. pl. 57. 2. Whether he must not shew what.
- Thorns.** Trespass *quare spinas suas crescent. cepit* & *assortavit ad valen* &c. Good, without shewing the number of loads; for this is special, and the value reduces it to a certainty. Mich. 15 Jac. Ban. Regis, Jones and Wilson.
- Shocks of wheat.** But if it be *quasdam garbas tritici*, it is not good for the uncertainty what is meant by garbs, Trin. 7 Jac. Ban. Regis, for it seems a garb may be more or less.

## Trials.

## B. R.

**I**ssues joined of a former term, to be tried the first or second sitting of every term. Reg. H. 20 & 21 C. 2.

In London or Middlesex, causes for trial must be entered with the chief justice two days before the sitting whereon they are to be tried, or the marshal may enter a *ne recipiatur* at the request of the defendant or his attorney. Reg. H. 15 & 16 C. 2.

If

## C. B.

**C**auses to be tried at Guildhall, London, or at Westminster-Hall, to be entered in marshal's book, two days at least exclusive before the day of trial, or a *ne recipiatur* may be entered. Per order of the L. C. J. E. 1 Jac. 2.

Rule for trial at bar being usually granted one or more terms before such trial is appointed to be had; and the *babeas corpora* is made out upon a *venire*, return-

B. R.

If the defendant enters a *ne recipiatur* in London or *Middlesex*, and thereby hinders the plaintiff from trying his cause that sitting; he may try it the next sitting, upon giving notice during the first sitting. *Reg. M. 4 A.*

No record or writ of *nisi prius* will be received at any sitting after term in *Middlesex*, unless the same shall be delivered to and entred with the marshal within two days after the last day of every term.

And no record or writ of *nisi prius* will be received at any sitting after term in *London*, unless the same shall be delivered to, and entred with the marshal, the day before the day to which the sittings in *London* shall be first adjourned.

And every cause to be tried at *nisi prius* in *London* or *Middlesex*, shall be tried in the order in which it is entred, (beginning with *remnants*) unless it shall be made out to the satisfaction of the judge in open court, that there is reasonable cause to the contrary, who thereupon will make such order for the trial of the cause so to be put off, as to him shall seem just. *Notice fixed up, M. 17 G. 2.*

C. B.

returnable in the preceding term, so that the attorney for the plaintiff has always an opportunity of giving timely notice to the court of the day when the trial is to come on; therefore the plaintiff's attorney in every cause which in such case shall be tried at bar, shall before the escoin-day of the term it is to be tried in, give notice to the chief prothonotary, or his secondary, of the day of trial, that the same may be put down in the court book; otherwise not to be tried that term, without motion, and the special direction of the court. *Reg. H. 9 A. C. B.*

In every cause to be tried at bar, a copy of the issue to be delivered to each judge four days before the time appointed for trial. *Reg. M. 3 G. 2. C. B.*



## Orders, By the 12 judges.

In every cause to be tried in the respective circuits, the writ and record shall be entered together; and no record shall be received without the writ. *Reg. T. 10 & 11 G. 2.*

No writ and record of *nisi prius* shall be received at the assizes in any county in *England*, unless delivered to and entered with the marshal, before the first sitting of the court, after the commission day; except in the counties of *York* and *Norfolk*, and there the writs and records shall be delivered to and entered with the marshal before the first sitting of the court on the second day after the commission day, otherwise they shall not be received. And every cause shall be tried in the order in which it is so entered, without any preference or delay, unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable or inconvenient so to do, who thereupon may make such order for the trial of the cause, so put off, as to him shall seem just. And a list of the causes so entered, shall be made by the marshal, and forthwith fixed up in some publick place in the *nisi prius* court, there to remain during the whole time of the assizes. *Reg. H. 14 G. 2.*

Where any issue is joined in the courts of record at *Westminster*, great session of *Wales*, or *Chester*, common pleas at *Lancaster*, or court of pleas of *Durham*, and the plaintiff neglects to bring such issue on, to be tried according to the course and practice of the said courts respectively; the judges, at any time after such neglect, upon motion made in open court (due notice having been given thereof) may give the like judgment for the defendant, as in cases of nonsuit, unless the said judges, upon just cause and reasonable terms, allow further time for the trial; and if the plaintiff neglects to try such issue within the time so allowed, then the judge shall give judgment as aforesaid.



Provided, That all such judgments shall be of the same force and effect as judgments on nonsuit, and of no other force or effect. And the defendant to be awarded costs in any action where upon nonsuit he would be intitled to the same. *Stat. 14 G. 2. c. 17.*

Venue.

*B. R.*

**A**ctions upon the case, trespass for goods, assault or imprisonment, arising in any *English* county, are to be laid in their proper counties, unless they arise where the justices of assize seldom come. And because trespass, and trover for goods, battery, imprisonment and slander must needs be notorious in what county they arise, the attorney knowingly laying them out of their proper county (unless in the cases before expressed, or for such causes as shall be allowed by the judges of the court, and duly appear to be true) shall be severely punished.

Before plea upon oath made, the *venue* may be changed upon motion in the said transitory actions, and the defendant to plead to the new action as he should have done

*C. B.*

**A**ctions upon the case, trespass for goods, assault or imprisonment, arising in any *English* county, are to be laid in their proper counties, unless they arise where the justices of assize seldom come. And because trespass or trover for goods, battery, imprisonment and slander, must needs be notorious in what county they arise, the attorney knowingly laying them out of their proper county (unless in the cases before expressed, or such other cause as shall be allowed by a judge of the court) shall be severely punished.

In a transitory action before the defendant has pleaded, on motion and affidavit made, That the defendant's cause of action, if any, arose in the county of *A.* and not in the county of *B.* as laid in the declara-

## B. R.

done to the other without delay.

The venue may be changed (upon oath) as before, though the defendant come in by exigent. *Reg. M.* 1654.

## C. B.

tion, or elsewhere out of the county of *A.* the court will change the venue to the proper county, and the defendant must plead to the new action as he should have done to the former without delay; and the

venue may be changed in this manner tho' the defendant comes in by the exigent *Reg. M.* 1654.

The defendant cannot move to change the venue in any action until his appearance be entered. *Reg. E.* 24 *Car.* 2.

Any defendant may move to change the venue at any time before plea pleaded in all such actions where the venue may be changed by the course of this court, notwithstanding such defendant may have applied for and obtained further time to plead before such motion made. *Reg. M.* 16 *G.* 2.

All actions personal, where no possession is awarded, as *debt*, *detinue*, *annuity*, *account*, *case*, &c. are transitory, and may be commenced, and the declaration laid in such county as the plaintiff pleases; but the court, on motion before the rule to plead be out, will change the venue. (*See an affidavit for that purpose in the first part.*) But all real and mixt actions as *ejectment*, *trespass quare clausum fregit*, *waste*, &c. are local and must be laid in the county where the cause of action arose, or where the lands lie. *Clerk's Instr.* 69, 70.

The venue may be changed on the application of some of the defendants, tho' the others don't desire it. *Rep. & Ca. Pract. C. B.* 133.

It may be changed tho' the plaintiff be an attorney, if he sues by *capias*. *Ibid.* 132. The like as to a serjeant. *Ibid.* 145. An attorney's privilege does extend to change the venue into *Middlesex* where he is defendant. *Ibid.* 134.

Not to be changed on a bill of exchange or promissory note, because they are in the nature of specialties.

## Warrants of Attorney.

295

Specialties. *Ibid.* 119. Nor in *scandalum magnatum*. Nor in the city or town and county within the county, without the consent of the parties. *Ibid.* 36, 82. But it may from *Middlesex* into *London*, for *London* has always been considered in this respect as a county at large. *Ibid.* 41.

It may not be changed into a county palatine. *Ibid.* 91, 129. Nor to any county where the assizes are held but once a year.

Not to be changed after plea and notice of trial. *Ibid.* 33. 112. Nor after summons for time to plead. *Ibid.* 126. But it may, after plea, where application was made before. *Ibid.* 136. Also after an imparlance. *Ibid.* 159.

## Warrants of Attorney.

B. R.

**A** Bailiff or sheriff's officer, not to exact or take from any person in his custody by arrest, any warrant to acknowledge judgment but in the presence of an attorney for the defendant, which attorney shall then subscribe his name thereto, which said warrant shall be produced when the said judgment shall be acknowledged; any bailiff or officer offending to

C. B.

**T**HE principal in any bond or bill obligatory for the time to come, not to give a warrant to appear for or confess judgment against his surety; and no judgment be confessed for, or given against the security upon any such warrant given by the principal. *Reg. M.* 1654.

be severely punished; and no attorney shall enter up judgment on any warrant of attorney gotten from any defendant under an arrest, otherwise than as aforesaid. *Reg. E.* 15 C. 2. B. R.

At the time of delivering or filing a copy of the declaration, defendant's attorney shall pay 4*d.* for filing his warrant of attorney to the plaintiff's attorney,

torney, or on refusal to pay, the plaintiff's attorney may sign judgment by default. *Reg. M.*  
5 *A. B. R.*

## Wills.

*Devise of  
lands.*

*Nuncupa-  
tive will.*

**A**LL devises of lands devisable, shall be in writing, signed by the party devising, or by some other in his presence, and by his express directions, and shall be attested and subscribed in the presence of the devisor by three or four credible witnesses; or else they shall be void. And no devise in writing of lands or hereditaments, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence, and by his direction and consent. And no *nuncupative will* shall be good, where the estate bequeathed shall exceed the value of 30 *l.* that is not proved by the oaths of three witnesses that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness, that such was his will, or to that effect; nor unless such *nuncupative will* were made in the time of the last sickness of the deceased, and in the house of his habitation, or where he has been resident 10 days next before the making of such will, except where such person was taken sick, being from his own home, and died before he returned. After 6 months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any will *nuncupative*, except the testimony, or the substance thereof, were committed to writing within six days after the making the will. No letters testamentary, or probate of any *nuncupative will*, shall pass the seal of any court till 14 days after the decease of the testator be expired; nor shall any *nuncupative will* be received to be proved, unless process be first issued to call in the



the widow, or next of kin to the deceased. No will in writing concerning any goods or personal estate shall be repealed, nor shall any clause or bequest therein be altered, by any words, or will by word of mouth only, except the same be in the life-time of the testator committed to writing, and read to the testator, and allowed by him, and proved to be so done by three witnesses. Any soldier being in actual military service, or any mariner being at sea, may dispose of his moveables, wages, and personal estate, as before this act. Nothing in this act shall alter the jurisdiction or right of probate of wills concerning personal estates. *Stat. 29 C. 2. c. 3. made perpetual by 1 Jac. c. 17. § 5.*

All such witnesses as are allowed to be good witnesses upon trials at law, shall be good to prove a *nuncupative will*, or any thing relating thereto. *Stat. 4 A. c. 16.*

No lands, &c. to be given to any bodies politic for charitable uses, &c. unless done by deed sealed twelve months before the death of the donor, and inrolled in six months; and except it be to take effect immediately, and without power of revocation, &c. But not to extend to the two universities. *Stat. 9 G. 2. c. 36. See stat. 25 G. 2. c. 6.*



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